Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Application of BellSouth Corporation For	)	
Authorization Under Section 271 Of The	)	**CC Docket No. 01-277**
Communications Act To Provide	)	
In-Region, InterLATA Services In The	)	
States of Georgia And Louisiana	)	

REPLY COMMENTS OF AT&T CORP. IN OPPOSITION TO BELLSOUTH CORPORATION'S SECTION 271 APPLICATION FOR GEORGIA AND LOUISIANA

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INTRODUCTION AND SUMMARY OF ARGUMENT

The comments filed in this proceeding establish that BellSouth has not yet satisfied the requirements for long-distance entry in either Georgia or Louisiana. In particular, and as with its prior applications, the record evidence shows that BellSouth is not today providing CLECs with non-discriminatory access to its network facilities at cost-based prices, and that BellSouth's failure to do so has stymied UNE-based competition in its region. CLEC after CLEC details the specific inadequacies of BellSouth's systems, and the aspects of BellSouth's conduct, that have denied CLECs in Georgia and Louisiana a fair and equal opportunity to compete. And the Department of Justice ("DOJ"), whose analysis must be given "substantial weight," identifies numerous deficiencies, particularly with respect to BellSouth's operational support systems ("OSS"), that led it to withhold its support of this Application.

These Reply Comments are divided into eight parts. Part I reviews the record evidence regarding the range of failures and weaknesses that pervade BellSouth's OSS – which, as DOJ notes (at 4), "traditionally have been weak." The ongoing third-party testing in Florida continues to uncover gaping holes in BellSouth's systems and processes.[1] And the CLEC and DOJ comments paint a clear picture of inadequate performance riddled with significant problems.

The evidence establishes, for example, that CLECs have been denied non-discriminatory access to OSS pre-ordering functions because they are not given the capability to "parse" customer service records and because they must contend with a "due date calculator" that continues to generate inaccurate due dates. It establishes that an inordinate number of CLEC

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[1] BellSouth claims its systems are regional in nature. Although AT&T disputes this claim, BellSouth cannot insist upon it while simultaneously ignoring the ongoing problems that are being identified in the Florida third-party test.

orders – but virtually no BellSouth orders – fail to "flow through" BellSouth's systems and must be processed manually, with all the attendant mistakes, delays, increased costs and impediments to competitive entry which that entails. BellSouth's performance, and KPMG's Florida testing, show that it is not yet able to provide accurate, timely, and complete status notices, jeopardy notices, or completion notices, and that its historic problems with service order accuracy and provisioning accuracy continue to plague its would-be competitors. And the inadequacies of BellSouth's change control process and test environment are likewise substantial and well-documented, and the subject of unresolved exceptions in Florida.

Against this array of evidence, the Georgia and Louisiana PSCs contend that this Commission should find the checklist satisfied. But that contention is based on analyses that ignore the "credible complaints" lodged by the CLECs (DOJ Eval. at 2) and the evidence supporting those complaints, or that largely rely on BellSouth's unsupported assurances that any problems will soon be fixed and therefore should not stand in the way of immediate interLATA entry. This Commission has properly held that such promises of improved future performance cannot be given any weight, much less the dispositive weight that the state commissions here have repeatedly accorded them, and should reaffirm that fundamental principle in rejecting this Application.

Part II of these Reply Comments addresses issues relating to BellSouth's performance measurements and remedy plans. The comments confirm that the performance measurements and data on which BellSouth relies fail to demonstrate BellSouth's present compliance with the checklist, and that BellSouth's performance remedy plans contain fundamental flaws that prevent them from serving as effective deterrents against future backsliding. The pool of evidence shows that many of BellSouth's performance measures are inherently unreliable, and that BellSouth's data collection and performance reporting processes are so error-ridden that its reported results, to the extent they remain stable, cannot reasonably serve as probative evidence that BellSouth has somehow satisfied its statutory obligations. The inherent deficiencies in BellSouth's performance data have been identified by the CLECs, echoed by the DOJ, revealed during the metrics phase of the ongoing third-party tests of BellSouth's OSS in Florida and Georgia, and confirmed by BellSouth in this Application. Remarkably, even BellSouth's own incomplete and inadequate performance data show that it has not met its obligations under Section 271. Furthermore, the comments show that there is no sound basis for BellSouth's assertion that its self-executing enforcement mechanisms are sufficient to deter anticompetitive conduct in the future.

Moreover, any hope BellSouth has that the findings of the GPSC and LPSC can add strength to this inadequate record is unavailing. The evaluations of the GPSC and LPSC fail to analyze many of the deficiencies in BellSouth's performance reporting and remedy plans, accept BellSouth's incorrect rationalizations and explanations, or rest impermissibly on BellSouth's promises to take corrective steps to cure any existing deficiencies. Moreover, the GPSC takes the position that matters relating to defects in BellSouth's performance measures are not properly the subject of this proceeding. The GPSC's position is incorrect. Ensuring the completeness and reliability of performance measures and results before Section 271 entry is critical not only to assessing checklist compliance, but to establishing the appropriate point of departure against which to evaluate backsliding. The Act requires nothing less. These issues are far too important to competition to warrant compromise now.

Part III of these Reply Comments addresses BellSouth's failure to provide nondiscriminatory local number portability. The evidence confirms that BellSouth continues to assign to its own customers numbers that have previously been ported to CLEC customers. Moreover, BellSouth's failure to perform necessary switch translations when porting numbers to certain AT&T customers prevents these customers from receiving calls from BellSouth customers. The GPSC dismisses these problems by citing "manual" work-arounds that have either proven ineffective in the past, or that correct problems only after customers have experienced service degradations. These "solutions," like the underlying problems themselves, are discriminatory and hinder meaningful competition.

Part IV addresses BellSouth's failure to provide nondiscriminatory interconnection. BellSouth's own data show that CLECs experience far more trunk blocking than BellSouth in Georgia and Louisiana, and that BellSouth's performance has dramatically *worsened* since 1998. The contrary conclusions of the GPSC and LPSC rest entirely on the fact that BellSouth satisfied a self-devised and flawed trunk blocking metric that does not provide a "meaningful, 'apples-to-apples' comparison"[2] (because it includes a substantial amount of BellSouth traffic in what is supposed to be a measure of CLEC trunk performance) and masks CLEC blocking problems through use of statewide averages of all BellSouth trunks. BellSouth's current trunk blocking performance plainly fails to satisfy the Commission's established standards.

Part V addresses BellSouth's failure to provide nondiscriminatory access to unbundled loops. The comments confirm that BellSouth's hot cut performance is both deficient and worsening, and cannot be excused, as the GPSC and LPSC suggest, on the basis of another self-designed and flawed metric that does not measure the customer's actual experience. The comments likewise confirm that BellSouth does not provide any feasible means of line sharing

[2] DOJ Eval. at 37 n.132.

where BellSouth has deployed next generation digital loop carrier ("NGDLC") – a failure that prevents CLECs from competing in a substantial (and growing) portion of the advanced services market.

Part VI reviews the extensive evidence establishing that BellSouth's UNE rates are substantially inflated and preclude meaningful competition for both voice grade services and crucial advanced services such as voice and data services over a single line. The comments confirm that BellSouth's bloated UNE rates are the product of numerous TELRIC violations, including improper reliance on BellSouth's embedded network to compute switching and loop costs, the use of exorbitant and unlawful loading factors that inflate or double count costs, reliance on an impermissible reproduction cost approach and severely understated fill factors to compute loop costs, and a host of other clear methodological errors in the calculation of loop and switch element costs. Indeed, as a result of these violations, the per-line gross margins that are available in Louisiana are *negative* in two of the three Louisiana UNE zones and statewide, on average, *before* accounting for marketing, customer service and other internal costs. Moreover, BellSouth has effectively conceded that its Georgia switching rates are unlawful by recently submitting new rates that are 35 percent *lower* than those filed with this Application. Indeed, the daily usage fee ("DUF") BellSouth has filed here is more than twice as high as the rate BellSouth has submitted – and claims is TELRIC-compatible – in the new Georgia rate proceeding. Contrary to the views of the GPSC, these serious problems cannot be ignored in the hopes that they will be remedied in the future.

In addition to these pricing violations, the comments confirm that BellSouth fails to offer UNE-P service on a nondiscriminatory basis. BellSouth's SGAT in both Louisiana and Georgia require CLECs to pay higher rates associated with purchasing UNE-L and port elements separately when CLECs seek to provide popular voice and data services over a single line, rather than the lower UNE-P rate that they are entitled to under the Act. As several comments note, BellSouth also charges overstated rates for essential DC power and collocation spaces, and refuses to provide Next Generation Digital Loop Carrier loops. In addition, as a result of BellSouth's two-order conversion process, AT&T and other CLEC UNE-P customers have lost dial tone or suffered service disruptions. The GPSC's suggestion that these problems are rare is based on data from small residential volumes, and fails to take into account WorldCom's more recent and serious experience, as well as AT&T's experience in the business customer market.

Part VII addresses BellSouth's failure to satisfy the resale checklist item, because it does not make DSL transport services available for resale. As AT&T explained in its opening comments, BellSouth has acknowledged that its "wholesale" DSL services have been purchased by, and even marketed to, retail customers – which means they must be made available for resale pursuant to Section 251(c)(4). More fundamentally, BellSouth is required by Commission precedent to make the telecommunications underlying its enhanced services available at retail. BellSouth's claim that its DSL transport is unavailable as a stand-alone, retail service, and therefore need not be made available for resale either, is an admission that it is flouting one legal requirement in order to evade another.

Finally, as AT&T explains in Part VIII, the record, including BellSouth's own ex parte updating CLEC entry data between July and September, underscores the absence of local competition, particularly residential competition. Indeed, between July and September 2001, the number of facilities-based residential lines in Louisiana increased by a grand total of 99 while the number of UNE-P residential lines *fell* by 408 lines. In other words, during the most recent three month period for which data are available – a period during which BellSouth claims local markets were irreversibly open to competition – CLEC entry into Louisiana residential markets via facilities and UNE-P combined actually *decreased*. The Commission must therefore deny BellSouth's application.[3]

[3] AT&T's Comments (at 66-69) also explained that BellSouth failed to satisfy Checklist item 6, because it does not provide nondiscriminatory customized routing for operator services and directory assistance. The other parties' filed Comments did not contradict AT&T's showing on this issue. AT&T therefore stands on its opening Comments on this point, and does not address the issue further in these Reply Comments.

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REPLY COMMENTS OF AT&T CORP. IN OPPOSITION TO BELLSOUTH CORPORATION'S SECTION 271 APPLICATION FOR GEORGIA AND LOUISIANA

Pursuant to the Commission's Public Notice, AT&T Corp. ("AT&T") respectfully submits these Reply Comments in opposition to the Application of BellSouth Communications ("Application") for authorization to provide in-region, interLATA services in Georgia and Louisiana.

I. BELLSOUTH DOES NOT PROVIDE NONDISCRIMINATORY ACCESS TO ITS OSS (CHECKLIST ITEM 2).

The comments overwhelmingly demonstrate that BellSouth does not provide nondiscriminatory access to its OSS.[1] Indeed, the comments confirm that most of the OSS problems that the *Louisiana II Order* found to deny parity of access still exist, and that new ones have arisen. AT&T at 16; Covad at 1; WorldCom at 2. DOJ concludes that, despite improvements that BellSouth has made since *Louisiana II,* it "is not in a position to support the

[1] AT&T at 15-33; Birch at 7-35; Cable Television Assn. of Georgia at 1-5; Cbeyond at 18-19; Competitive Telecommunications Association ("CompTel") at 3-10; Covad at 1-35, 43-45; Mpower Communications Corp., Network Plus, Inc., and Madison River Communications ("Mpower") at 2-27; NuVox Communications and Broadslate Networks, Inc. ("NuVox") at 6-9; Sprint at 19; WorldCom at 2-3, 8-47.

application on the present record" because "serious questions remain regarding the extent to which BellSouth's OSS are adequate to support entry by UNE competitors." DOJ Eval. at 2, 38; *see also id.* at 13.

The real-world experiences with BellSouth's OSS described by the comments belie the conclusions of the GPSC and the LPSC that BellSouth has complied with its OSS obligations. Although both PSCs acknowledge this Commission's repeated holding that actual commercial usage is the most probative evidence as to whether a BOC is complying with its OSS obligations (GPSC at 48, LPSC at 25), both PSCs often accept BellSouth's evidence at face value. In numerous instances, the PSCs disregard OSS-related issues raised by the CLECs altogether, resolve OSS-related issues without considering the evidence submitted by the CLECs, or rely on BellSouth's promises of future fixes.

Furthermore, although the GPSC and LPSC cite the third-party testing by KPMG in Georgia as evidence that BellSouth has met its OSS obligations, they accept the deficiencies that KPMG found in the Georgia testing – which only confirmed the poor OSS performance revealed in BellSouth's commercial data. *See* GPSC at 112-126; LPSC at 25-26; AT&T at 17-18; Covad at 27-30. Moreover, the PSCs do not even mention (much less discuss in their analyses) the third-party test of BellSouth's OSS in Florida, which is far *more* probative than the Georgia test. As DOJ states, the "Florida test is broader in scope and promises to provide a more robust assessment of BellSouth's OSS than did the Georgia OSS test," which had "significant limitations" – including its "limited scope," its lack of independence, and the premature closure of a number of test "exceptions" by KPMG.[2] KPMG itself has emphasized that the scope of its

[2] *See* DOJ Eval. at 4-6. *See also* AT&T at 17-19; Covad at 5-9, 19-22, 45-53. Although it includes a summary of AT&T's evidence regarding the Florida test in its overall description of the CLECs' evidence on OSS, the GPSC refers to the Florida test (if at all) only once in its
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Georgia testing was limited, and that it has been surprised and concerned by the suggestion that the Georgia test might be extensively relied upon as evidence of the adequacy of BellSouth's OSS generally.[3]

The flawed conclusions of the GPSC and LPSC result in large part from their piecemeal approach to the issue of BellSouth's compliance. While citing this Commission's holding that it will "look at the totality of the circumstances" and "the larger picture" in judging OSS performance, the PSCs analyze each alleged OSS problem individually, without considering the various problems in the larger context. GPSC at 85; LPSC at 39. Where they encounter a particular OSS problem, the PSCs either accept BellSouth's explanation, dismiss the problem as competitively insignificant if taken in isolation, and/or improperly rely on the possibility of future improvements in BellSouth's performance.[4]

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analysis of OSS issues (and obliquely at that), when it states that "While the scope of the third-party test in Georgia may be different from third party test conducted elsewhere, such differences are immaterial." GPSC at 79-81, 115. The LPSC, although concluding that BellSouth's OSS are regionwide in nature, never refers to the Florida test – focusing instead on the issue of whether a third-party test in Louisiana was necessary to its evaluation. LPSC at 25-30. Yet if BellSouth's OSS are in fact the same across its region (as BellSouth alleges), *any* evidence of BellSouth's performance is relevant, regardless of the state in which it was collected. *See* DOJ Eval. at 6; AT&T at 8.

[3] For example, earlier this month before the North Carolina Utilities Commission, KPMG's Managing Director, Michael Weeks, testified that KPMG "never intended the Georgia report to be used by other than the Georgia Commission. . . . And so it gives us a little bit of cause for pause that it's being used in another jurisdiction in a way that it didn't intend for it to be used." He further testified that the North Carolina Commission "needs to make [its] own assessment of the areas that weren't evaluated in the Georgia test" and determine "whether there are areas there that you feel, as a Commission, that you would like to have some record on." *See* Transcript of proceedings conducted November 1, 2001, in North Carolina Utilities Commission Docket No. P-55, Sub 1022, at 137-138 (Bradbury Reply Decl. ¶¶ 71-72 & Att. 26).

[4] *See, e.g., Michigan 271 Order* ¶ 55 ("a BOC's promises of *future* performance to address particular concerns raised by commenters have no probative value in demonstrating its *present* compliance with the requirements of section 271") (emphasis in original).

The conclusions of the PSCs thus cannot alter what the record clearly demonstrates: despite modest improvements in its OSS since the *Louisiana II Order*, BellSouth is still not in compliance with its OSS obligations. That fact alone requires denial of its application.

A. The Comments Demonstrate That BellSouth's Interfaces Fail To Provide Nondiscriminatory Access.

The comments describe numerous instances in which the overall design and implementation of BellSouth's OSS deny CLECs the same access to OSS functions that BellSouth has in its retail operations. This is particularly the case with respect to pre-ordering, ordering, and provisioning.

Pre-Ordering. The comments demonstrate that BellSouth continues to deny nondiscriminatory access to pre-ordering functions. First, by refusing to provide CLECs with the functionality to "parse" customer service records ("CSRs") in connection with preparing local service orders, BellSouth denies CLECs the ability fully and successfully to integrate pre-ordering and ordering functions. As a result, CLECs are required to manually re-enter information onto the local service request ("LSR") – with the risks of delays and errors, and additional costs, inherent in manual processing. By contrast, BellSouth's retail operations have full parsing capability in place that provides them with auto-population of such data electronically into retail orders. AT&T at 19-20; Mpower at 7-8; WorldCom at 22-26.

The GPSC and LPSC state that BellSouth has not violated its OSS obligations despite its failure to provide parsing functionality to CLECs, because: (1) BellSouth "estimates" that numerous CLECs have fully integrated pre-ordering and ordering functions; (2) BellSouth provides CLECs with the ability to parse CSR information by using the TAG pre-ordering interface; and (3) BellSouth will implement fully parsed CSR functionality in January 2002.

GPSC at 87-88; LPSC at 32-33. None of these reasons, however, withstands scrutiny. BellSouth has offered no evidence demonstrating that specific CLECs have successfully been able to parse CSR data, and the PSCs cite none.[5]

The PSCs' finding that CLECs can successfully parse CSR data by using TAG is contrary to the evidence. Bradbury Decl. ¶ 39. More generally, independent development of parsing functionality by a CLEC would be extremely difficult (as evidenced by BellSouth's own acknowledged difficulties in developing parsing functionality for CLECs) and illogical (given BellSouth's repeated promises to provide such functionality). *See id.* ¶ 38 n.17; WorldCom at 23; Stacy Aff. ¶ 223 (describing "programming complexities and system interdependencies" as reasons for the length of time BellSouth has taken to develop parsing functionality); Bradbury Reply Decl. ¶ 5.

Finally, the PSCs' reliance on BellSouth's claimed forthcoming implementation of parsed CSR functionality is misplaced. Such reliance is improper not only because it amounts

[5] BellSouth "estimated" to the GPSC and LPSC that 6 CLECs have integrated the TAG pre-ordering interface with the EDI ordering interface and that 43 CLECs have integrated the TAG pre-ordering interface with the TAG ordering interface. GPSC at 88; LPSC at 33. BellSouth, however, provided no basis for these "estimates." Moreover, as AT&T has previously demonstrated, BellSouth's vague assertion that a CLEC has "integrated" pre-ordering and ordering functions does not resolve the issue of whether a CLEC has been able to parse CSR data and electronically populate it into an LSR. *See* Bradbury Decl. ¶ 39 n.18. Finally, BellSouth's "estimates" cannot be considered reliable. In its application before this Commission, BellSouth now "estimates" that *30* CLECs have integrated the TAG pre-ordering interface with the TAG ordering interface – a figure approximately one-third *lower* than that which BellSouth described to the PSCs. Application at 68; Stacy Aff. ¶ 37. BellSouth offers no explanation why, in the months since it presented its "estimates" to the PSCs, the number of these CLECs should have decreased. In any event, BellSouth has failed to offer the type of evidence – including statements from CLECs and evidence from third-party testing – that formed the basis for the Commission's decisions in previous Section 271 proceedings that the BOC applicant had provided CLECs with the ability to parse pre-ordering information. *See New York 271 Order* ¶ 138 (citing testimony submitted by a CLEC and other evidence showing successful parsing by particular CLECs); *Texas 271 Order* ¶ 154 (citing statements by two CLECs that they had been
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to reliance on promises of future compliance with Section 271, but also because the evidence demonstrates that this functionality – which fails to implement the specifications agreed to in November 2000 by BellSouth and the CLECs – will give CLECs only limited parsing capability. Bradbury Decl. ¶ 33; Bradbury Reply Decl. ¶ 6; WorldCom at 20 & Att. 1 to Decl. of Lichtenberg, Desrosiers, Kinard & Cave. In any event, it is questionable whether BellSouth will install even that limited functionality by January 2002, since BellSouth recently reneged on its promise to distribute the specifications for the functionality on November 9, 2001. Bradbury Reply Decl. ¶ 7.[6]

Second, BellSouth continues to deny CLECs equivalent access to due dates, having failed to correct the deficiencies identified in the *Louisiana II Order*. Although the GPSC and LPSC cite BellSouth's implementation of automatic due date capability (GPSC at 88; LPSC at 34-35), the evidence shows that BellSouth still does not provide a due date calculator that *accurately* and *reliably* provides due dates. As a result, CLEC customers will often receive service at a later time than BellSouth's retail customers. AT&T at 20-21; Mpower at 4-5. Indeed, BellSouth recently confirmed that, due to a "system defect," its due date calculator does not accurately calculate due dates. Bradbury Reply Decl. ¶ 20 & Att. 8.

BellSouth, however, has established no timetable for resolution of this problem. Instead, it has suggested a "workaround" under which its Local Carrier Service Center ("LCSC")

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able to integrate pre-ordering and ordering functions, and results of third-party testing by Telcordia).

[6] BellSouth also recently failed to meet the GPSC's requirement that it implement by November 3, 2001, suitable functionality for "migration by telephone number" for all UNE-P migration orders. If fully implemented, migration by telephone number would reduce (although not eliminate) some of the adverse effects experienced by CLECs as a result of BellSouth's failure to provide equivalent parsing functionality. BellSouth now faces fines of $10,000 a day until it fully complies with the GPSC's order. Bradbury Reply Decl. ¶¶ 8-15.

will manually correct due date errors – a procedure that simply will not work. *Id.* ¶¶ 20-23. Although BellSouth more recently advised AT&T that it has implemented a "mechanical fix" to resolve the problem, BellSouth's claim is highly dubious, particularly since the "fix" apparently does not affect the defective due date calculator itself. In any event, the "mechanical fix" represents little (if any) improvement over BellSouth's "workaround." *Id.* ¶¶ 24-27.

Ordering and Provisioning. The comments demonstrate that BellSouth is denying nondiscriminatory access to its ordering and provisioning functions as a result of its excessive reliance on manual processing that is the product of its own making. More than 25 percent of all electronically submitted LSRs, and nearly one-third of all electronically submitted UNE orders, fall out for manual processing due to BellSouth system design or BellSouth system errors. AT&T at 21-22; DOJ Eval. at 15.

The high rate of manual fall-out denies CLECs the same real-time access to order status information that BellSouth has in its own retail operations, results in later due dates for many more CLEC customers than BellSouth's retail customers, enhances the risks of input errors during manual processing that could lead to provisioning errors, and increases costs for CLECs (as well as for BellSouth, which simply passes them on to CLECs). As a result, CLECs are denied a meaningful opportunity to compete. DOJ Eval. at 13-14, 20-21; AT&T at 21-24; Bradbury Reply Decl. ¶¶ 31-33; Birch at 15-22; Mpower at 8-9; WorldCom at 15-21.[7]

[7] *See also* Covad at 12-18 (describing similar competitive harm resulting from BellSouth's refusal to provide any electronic ordering capabilities for the majority of Covad's loop orders). Because of BellSouth's failure to return status notices for partially mechanized orders in a timely manner, CLECs will be required to expend additional time and resources to contact BellSouth's LCSC if they wish to obtain status information before they receive a FOC or rejection notice. *See, e.g.,* Bradbury Decl. ¶¶ 67-68. This problem is exacerbated by the LCSC's unduly lengthy answering times – which are themselves the product of the heavy workload that the high rate of manual fall-out imposes on the LCSC. The LCSC's answer times are a denial of nondiscriminatory access, since they have been far longer than those of the BellSouth Business
(continued)

Given this evidence, the conclusions of the GPSC and LPSC that BellSouth's flow-through performance satisfies its OSS obligations are incorrect. The GPSC supports its conclusions by stating that: (1) KPMG found in its Georgia third-party testing "that BellSouth satisfied all of the applicable test criteria"; (2) BellSouth's flow-through rates are comparable to those of Verizon and SWBT, which have received approval for certain Section 271 applications; and (3) BellSouth's flow-through rates "should improve" as a result of the recent creation of the Flow-Through Improvement Task Force. GPSC at 99-100. These bases, however, are both factually and legally incorrect.

In the first place, contrary to the GPSC's assertion, KPMG found that BellSouth had *not* satisfied all of the applicable flow-through criteria in the Georgia test. *See* Bradbury Decl. ¶ 105 & Att. 24 at 2 (describing KPMG report finding that BellSouth had not satisfied criterion comparing flow-through rates for transactions submitted by test CLEC to benchmarks approved by GPSC). Furthermore, the GPSC's comparison of BellSouth's flow-through rates for CLECs with those of Verizon and SWBT is irrelevant. The proper comparison is not between BellSouth and other BOCs, but between BellSouth's flow-through rates for CLECs and

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Service Center ("BSC") that serves BellSouth's retail business customers. *Id.* ¶¶ 237-241. *See also* Mpower at 14. This lack of parity has a particularly adverse impact on CLECs where, as in AT&T's case, business customers constitute a substantial portion of the CLEC's customer base. Rather than analyze the disparity in the answer times of the BSC and LCSC, however, the GPSC simply compared the *combined* answer times of the BSC and BellSouth's Residence Service Center ("RSC") (which are far longer than those of the BSC or the LCSC) with the answer times of the LCSC, and concluded that the answering times of the LCSC were "significantly better than the answering times for BellSouth's retail customers." *Compare id.* ¶ 239 *with* GPSC at 86. The GPSC's analysis ignored the disaggregated data reported by BellSouth – and included in AT&T's evidence – showing the separate answer times at the LCSC, RSC, and BSC. *See* Bradbury Reply Decl. ¶ 60 n.27.

its flow-through rate for its own retail operations – which is nearly 100 percent.[8] When the latter comparison is made, it is clear that parity does not exist. As the GPSC acknowledges, the "achieved" flow-through rates for CLEC orders – which measure flow-through in accordance with the Commission's requirements – were far below 100 percent and in some cases were as low as 39 percent.[9] Moreover, the "regular" flow-through rates described by the GPSC for residential resale, business resale, and UNE LSRs were well below the applicable benchmarks – as the GPSC effectively admits by citing only the "regular" flow-through rates for local number portability ("LNP") as having satisfied the applicable benchmark.[10]

The GPSC's finding that flow-through rates "should improve" as a result of the Flow-Through Improvement Task Force is yet another example of its improper reliance on the

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[8] *See* AT&T at 22; *see also* DOJ Eval. at 15 n.42 (stating that a comparison with the flow-through rates of BOCs that have received Section 271 approval "even if true, does not address the extent to which BellSouth's manual processing negatively affects CLECs").

[9] *See* GPSC at 100 (stating that achieved flow-through rates between April through June 2001 "for residence range from approximately 80-84 percent, for business from 39-42 percent, and 57-63 percent for UNE orders"). The achieved flow-through rate excludes LSRs that fall out for manual processing due to CLEC errors, while including manual fall-out caused by BellSouth system design and BellSouth system errors. This approach is consistent with the Commission's prior holdings that a BOC is not accountable for flow-through problems due to CLEC errors. *See* Bradbury Decl. ¶¶ 59, 74-79; WorldCom at 21 n.17. The GPSC appears to recognize that the achieved flow-through rate is the most reliable measure of flow-through reported by BellSouth, because it cites BellSouth's achieved flow-through rates before it discusses the "regular" ("CLEC Error Excluded") flow-through rates, which are a less reliable measure of flow-through because they improperly exclude fall-out caused by BellSouth system design. GPSC at 100; Bradbury Decl. ¶ 80.

[10] *See* GPSC at 100. The "regular" flow-through rates for April through June cited by the GPSC were 90-91 percent for residential resale (as opposed to a 95 percent benchmark), 57-64 percent for business (as opposed to a 90 percent benchmark), and 74-80 percent for UNE orders (as opposed to an 85 percent benchmark). *Id.* Even the business and UNE rates cited by the GPSC are overstated, because the GPSC clearly relied on the June rates for residential resale and UNEs originally filed by BellSouth – as opposed to the revised June rates that BellSouth subsequently filed, which were lower than the ranges described by the GPSC for those categories. *See* Application at 75 (describing "regular" June rates as 87.4 percent for residential resale and 70.4 percent for UNEs).

possibility of better performance by BellSouth in the future. GPSC at 100.[11] The evidence shows that the experience of the Task Force offers little (if any) hope for improved performance by BellSouth. Bradbury Decl. ¶¶ 98-101.[12] BellSouth's witness Stacy recently admitted that barring some process break-through, "it is unlikely [that] there will be significant improvement in manual fallout by design in the foreseeable future." *See* Bradbury Reply Decl. ¶ 53.

The LPSC's analysis of the flow-through issue is clearly deficient. The LPSC recognizes that a BOC is required to provide such electronic ordering capabilities to CLECs "insofar as it provides them to itself." LPSC at 43. The LPSC then effectively admits that CLEC flow-through rates are effectively not at parity with those of BellSouth's retail operations,

[11] The GPSC further attempts to minimize the significance of BellSouth's excessive reliance on manual processing by finding that only approximately 30,000 LSRs fell out due to BellSouth design in March 2001, and that designed fall-out affects only 8-9 percent of all electronic LSRs. *See* GPSC at 101. The GPSC's calculation, however, not only substantially understates the number of LSRs that fell out by design in that month, but also overlooks the total number of additional LSRs that fell out due to BellSouth system errors (which, BellSouth has admitted, constitute 12 to 13 percent of all CLEC orders). GPSC at 101; Bradbury Reply Decl. ¶¶ 54-60; Bradbury Decl. ¶ 102; Reply Declaration of William Stacy on OSS filed July 16, 2001 in GPSC Docket No. 6863-U, ¶ 111. Thus, BellSouth itself has admitted that it is causing more than 20 percent of CLEC orders to fall out for manual processing.

[12] *See also* Mpower at 8-9 (noting that although GPSC ordered creation of Task Force because the extent of manual processing "is so dire," BellSouth's response to the problem was not to address its root cause, but instead to change its methods of measuring its performance so that its performance appears to be improved). The GPSC's assertion that this Commission "accepts that not all CLEC service requests flow through" and "has recognized that some service requests properly could be designed to fall out for manual processing" is a distortion of this Commission's decisions. *See* GPSC at 101. In the Commission decisions cited by the GPSC, the Commission simply noted that some CLEC orders were not designed to flow through. *See Texas 271 Order* ¶ 280; *New York 271 Order* ¶ 160 n.488. At most, the Commission has held that a Section 271 application will not be automatically denied simply because a BOC has not designed all CLEC orders to flow through. The Commission has made clear, however, that a BOC must show that its OSS "are capable of flowing through competing carriers' orders in substantially the same time and manner as [its] own orders" and that BOCs may design certain types of LSRs (such as LSRs requesting complex services) for manual processing *only* if the same type of order is manually processed when submitted for a BOC's retail customer. *See, e.g., Pennsylvania 271 Order* ¶ 49; *Massachusetts 271 Order* ¶ 78; Bradbury Decl. ¶ 96 n.41; Stacy Aff., OSS-59 at 1. BellSouth plainly has failed to meet these requirements.

for it finds that BellSouth is "meeting [flow-through] expectations in some areas, but not in others" – most notably the flow-through rates for business resale orders (which "needs improvements") and for UNE orders (which the LPSC describes as "close to" meeting expectations). *Id.* at 44.

In view of its own findings, the LPSC's conclusion that BellSouth is in compliance with its OSS obligations is indefensible. The residential resale flow-through rates cited by the LPSC failed to meet the LPSC's benchmarks, and actually *declined* from April to June. *Id.* at 44. In asserting that UNE flow-through rates are "close to" meeting expectations, the LPSC ignores the fact that UNE rates *declined* during each month from April to June, when it was 70.4 percent – nearly 15 percentage points below the applicable benchmark. *Id.* Moreover, revised flow-through data recently filed by BellSouth show that, contrary to the LPSC's assumptions, the UNE flow-through rate *decreased* further in July and did *not* meet the 85 percent benchmark in August.[13]

Similarly, although it expresses "concern" about the low level of business flow-through rates, the LPSC plainly errs in suggesting that this "concern" is sufficiently mitigated by: (1) the higher business flow-through rate for August; (2) the greater level of complexity of business orders; (3) the forthcoming efforts of the LPSC's consultant to work on a flow-through improvement plan with BellSouth; and (4) the LPSC's intention to "closely monitor this data for

[13] The LPSC found that the "regular" flow-through rate for UNEs was 70.4 percent in June, 78.47 percent in July, and 93.13 percent in August. LPSC at 44. However, according to the most recent revision of flow-through rates filed by BellSouth in late October, the UNE flow-through rate was only 67.36 percent in July and 80.82 percent in August. *See ex parte* letter from Jon Banks (BellSouth) to Magalie Roman Salas, dated October 25, 2001 ("October 25 *ex parte*"), at 8; Bradbury Reply Decl. ¶ 41. Thus, assuming that BellSouth's revised data are correct, the July rate was lower than the June rate. Furthermore, although the revised August rate still represented an increase over that of July, it was 13 percentage points lower than the rate
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improvement in the six-month review." *Id.* at 45. The LPSC's reliance on the August rate overlooks the continuing unsatisfactory levels of the business flow-through rate. That rate declined each month from April through June, when it was only 57.06 percent. *Id.* at 44. Although the rate increased in July and August, it still remained well below the applicable benchmark.[14] Moreover, the LPSC offers no basis for its suggestion that the "greater level of complexity" of business orders necessarily results in lower flow-through, and the evidence shows that there is none.[15] Finally, although the intentions of the LPSC and its consultants to work towards improvement of flow-through rates are commendable, they are legally insufficient to compensate for the *current* failure of BellSouth to provide flow-through capability to CLEC orders consistent with the requirements of the 1996 Act.

Leaving aside the above-described flaws in their analysis, the conclusions of the GPSC and LPSC cannot be sustained because the reported flow-through data they cite are unreliable. As DOJ notes, BellSouth has "repeatedly revised" its aggregate flow-through data for June through August 2001, "mak[ing] it difficult to conclude that these data accurately depict BellSouth's performance and can be relied upon to establish benchmarks for future

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assumed by the LPSC and – contrary to the LPSC's apparent assumption – failed to meet the 85 percent benchmark.

[14] The business flow-through rates for July and August that the LPSC cites are approximately 8 percentage points higher than the revised rates recently filed by BellSouth for those months. *Compare* LPSC at 44 (69.5 percent for July, 80.72 percent for August) with October 25 *ex parte* at 8 (revising rates to 61 percent for July and 72.14 percent for August). Thus, even the August rate, as revised by BellSouth, remained nearly 20 percentage points below the applicable benchmark.

[15] *See* Bradbury Decl. ¶¶ 95-97 (showing that BellSouth cannot plausibly argue that CLEC orders for complex services cannot be designed to flow through, since BellSouth has designed its systems to flow through retail orders for these services).

performance." *See* DOJ Eval. at 15, 34-35; Bradbury Reply Decl. ¶¶ 36-45.[16] The reliability of the data is further undermined by BellSouth's illogical explanations for the revisions that it made. *Id.* ¶¶ 46-50. In addition, the comments show that BellSouth has manipulated – and overstated – its flow-through rates for individual CLECs. Birch, for example, determined that its reported flow-through rate was overstated by more than 37 percentage points. *See* Birch at 10-12; WorldCom at 18. Because its data – including the flow-through rates on which it relies in this Application – are so clearly untrustworthy, BellSouth cannot show that the flow-through capability of its OSS gives CLECs a meaningful opportunity to compete.

BellSouth cannot excuse its excessive reliance on manual processing by citing previous Commission orders that approved the Section 271 applications of other BOCs despite less-than-perfect flow-through rates. In those decisions, the applicant proved that it could adequately handle increasing order volumes despite high levels of manual processing. *See* WorldCom at 16; *New York 271 Order* ¶¶ 161-163. BellSouth cannot make such a showing here. For example, the comments confirm that, as a result of the high rate of manual processing, BellSouth is failing to provide timely, accurate, and complete status notices – thereby denying CLECs a meaningful opportunity to compete. *See* AT&T at 22-23; Birch at 22-26; Mpower at 10-11; WorldCom at 8-12. Despite the relatively modest current level of order volumes, BellSouth fails to return a significant number of such notices for LSRs – and, to the extent they are returned, they are often untimely, incomplete, or erroneous. *Id.*

The conclusions of the GPSC and LPSC that BellSouth's performance in the provision of status notices has been adequate are, therefore, incorrect. For example, although the

[16] Another reflection of the unreliability of BellSouth's flow-through data is the failure of such data to include xDSL transactions. This omission was recently noted (again) by KPMG, and confirmed by BellSouth. Bradbury Reply Decl. ¶¶ 52, 65.

PSCs conclude that BellSouth is providing firm order confirmations ("FOCs") and rejection notices in a timely manner, they fail to consider AT&T's evidence that BellSouth has manipulated its data by excluding "non-business hours" from its calculation of the timeliness of these notices for partially mechanized orders (*i.e.*, electronically-submitted orders that do not flow through).[17] Furthermore, neither PSC addresses the evidence submitted by AT&T that BellSouth's average intervals for returning FOCs and rejection notices on partially mechanized orders (18 hours and 12 hours, respectively) are a denial of parity, because such notices are generally returned within 15 minutes for LSRs that do not fall out for manual processing.[18] The GPSC instead reasons that BellSouth's failure to return some FOCs or rejects in a timely manner "appears to have little competitive impact." GPSC at 98. That conclusion is contrary to the evidence showing that the lack of timely status notices impairs a CLEC's ability to compete by denying it the ability to advise its customers of order status and installation dates, requiring it to expend time and costs to ascertain such status through manual procedures, and delaying installation dates for many CLEC customers. DOJ Eval. at 20; Bradbury Decl. ¶¶ 66-69, 139.[19]

Similarly, BellSouth cannot show that it provides timely and complete jeopardy notices, given the experience of the CLECs and its own admission that the applicable reported

[17] *See* GPSC at 94-99; LPSC at 41-42; Bradbury Decl. ¶ 128-130; Affidavit of Jay M. Bradbury filed May 31, 2001, in GPSC Docket No. 6863-U ("Bradbury GA Aff."), ¶ 65 (describing BellSouth's exclusion of "non-business" hours in calculating intervals for partially mechanized FOCs and rejection notices); Affidavit of Jay M. Bradbury filed June 8, 2001 in LPSC Docket No. U-22252 ("Bradbury LA Aff."), ¶ 165 (same).

[18] *See* Bradbury Decl. ¶¶ 135-141; Bradbury GA Aff. (Attachment 16 to Bradbury Reply Decl.) ¶¶ 69-72; Bradbury LA Aff. ¶¶ 126-128. Although the GPSC described AT&T's evidence regarding the intervals for the return of FOCs on partially mechanized LSRs in its recitation of the CLECs' evidence regarding the OSS issue, its analysis of FOC timeliness does not discuss the matter. GPSC at 75, 94-99.

[19] The GPSC's suggestion that BellSouth's reported data may understate its true performance regarding the timeliness of FOCs is without merit. *See* GPSC at 95 n.17*;* Bradbury Reply Decl. ¶¶ 61-63.

data are inaccurate. *See* Bradbury Decl. ¶¶ 142-143; DOJ Eval. at 37 & n.129; Birch at 22-23 (describing BellSouth's failure to provide *any* jeopardy notices for dozens of Birch orders where BellSouth missed the due date). Given the absence of reliable data on the issue, the analyses of this issue by the GPSC and LPSC are unsupported. The GPSC's finding that BellSouth is meeting its obligation to provide timely jeopardy notices because "relatively few orders are actually placed in jeopardy," and few CLECs have raised the issue, is illogical.[20] The LPSC's analysis of the issue improperly relies on BellSouth's promise to "fix" the calculations for this measurement and the LPSC's Staff's future examination of BellSouth's performance in this area, rather than determining the adequacy of BellSouth's current performance. LPSC at 45.

The comments also confirm that BellSouth has not met the Commission's requirement to show "that it provides competing carriers with order completion notices in a timely manner." *See New York 271 Order* ¶ 187; Bradbury Decl. ¶¶ 144-147; WorldCom at 2, 9. As of early October, for example, WorldCom had not received more than 400 completion notices for its orders – and two-thirds of those notices had been missing since *July*. WorldCom at 9. KPMG has found BellSouth's performance in the provision of completion notices to be inadequate in its Georgia and Florida third-party testing. Bradbury Decl. ¶¶ 146-147.

Despite the clear importance of the provisioning of completion notices to the issue of checklist compliance, the GPSC does not even address the issue in its report. The LPSC, by

[20] *See* GPSC at 102. The GPSC fails to recognize, for example, that the small number of reported jeopardy notices may be due to BellSouth's failure to provide jeopardy notices *at all* (a situation repeatedly experienced by Birch), which precludes CLECs raising the issue. The GPSC also errs in suggesting that the lack of reliable data can be excused by the fact that BellSouth rarely misses an appointment even when an LSR is placed in jeopardy. *See id.* If BellSouth may not be able to meet a due date, CLECs need to know that fact in advance of the due date, so that they can advise their customers that their service might not be installed as originally scheduled. Bradbury Decl. ¶ 142; Varner GA Aff. ¶ 42; DOJ Eval. at 37 n.129.

contrast, finds that BellSouth has "demonstrated poor performance." LPSC at 45.[21] Remarkably, the LPSC then proceeds to excuse this deficiency by: (1) accepting BellSouth's explanation that its poor performance was due to "a problem in the Work Management Center" and BellSouth's description of a "specific action plan that has been implemented"; (2) promising to monitor performance results to ensure that this "fix" is successful; and (3) stating its "understanding" that "there is a substantial improvement" in BellSouth's performance in July and August. *Id.* at 45-46. The LPSC's first two stated reasons, however, amount to an improper reliance on the possibility of improved performance by BellSouth in the future. Furthermore, the LPSC's "understanding" of "substantial improvement" in BellSouth's July and August performance is belied by its own acknowledgment that BellSouth "has paid penalties for missing the applicable standards for July data." *Id.* at 46. In short, the LPSC's rationalizations cannot ignore the basic reality that BellSouth has not shown (and cannot show) that it provides completion notices, and other status notices, in an adequate and timely manner.[22]

The comments further confirm that these problems are compounded by BellSouth's low rates of service order accuracy and provisioning accuracy, as reported by BellSouth itself in its performance data and found by KPMG in its Georgia and Florida testing.

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[21] BellSouth's actual performance is probably even worse than that described by the LPSC, since BellSouth has not calculated completion notices correctly and has failed to include all completion notices in its reported data. *See* Bursh/Norris Decl. ¶ 75.

[22] In its Florida third-party testing, KPMG has issued additional exceptions and observations, subsequent to those described by AT&T in its opening comments, finding that BellSouth fails to provide adequate and timely status notices to CLECs. *See, e.g.,* Bradbury Decl. ¶¶ 146-147. KPMG found, for example, that it failed to receive FOCs on manually submitted orders, did not receive completion notices for LSRs submitted via the TAG interface, and did not receive FOCs or completion notices for xDSL LSRs submitted via the LENS interface. *See* KPMG Exception 117, issued November 1, 2001; KPMG Observation 122, issued October 5, 2001; KPMG Observation 127, issued October 15, 2001. *See* Bradbury Reply Decl. ¶ 65 & Attachments 18 to 21. The Florida PSC recently ordered that KPMG also test BellSouth's new UNE billing
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See DOJ Eval. at 17-19; AT&T at 23; Birch at 19-20. DOJ correctly notes that "BellSouth's service representatives find it difficult to accurately reproduce the orders CLECs submit," and that BellSouth has "missed by a wide margin almost all of the order accuracy performance standards for UNEs in June and July in both Georgia and Louisiana." DOJ Eval. at 17 & n.51; *see also id.* at 18 n.55 (describing similarly poor performance in September). For example, BellSouth's performance with respect to service order accuracy is so poor that Birch has been forced to request extended due dates, to ensure that BellSouth's errors can be corrected before conversion – and even that approach has not always prevented such errors from impacting customers. Birch at 19-20. BellSouth's poor order accuracy rate denies CLECs a meaningful opportunity to compete, because it prevents CLEC orders from being provisioned as quickly and accurately as those for BellSouth's retail customers and damages a CLEC's reputation for providing quality service. *Id.*; DOJ Eval. at 17-18.

Despite the obvious importance of service order accuracy and provisioning accuracy to the issue of whether BellSouth is providing nondiscriminatory access to its OSS,[23] the LPSC does not even address either issue in its report. The GPSC, although noting that BellSouth's service order accuracy rate was a concern expressed by KPMG in its final report on the Georgia third-party test, concludes that BellSouth met most of the sub-metrics in its service

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systems to be implemented in December, given the failure of the current billing systems to pass KPMG's test to date. *Id.* ¶ 69.

[23] *See Michigan 271 Order* ¶ 212 (stating that BOC should include data on service order accuracy and provisioning accuracy in a Section 271 application in order to enable Commission to determine whether BOC is providing nondiscriminatory access to OSS functions).

order accuracy in May and June – disregarding BellSouth's poor performance in these areas in July and August. *See* GPSC at 102, 126; Bursh/Norris Decl. ¶ 116; Bradbury Decl. ¶ 115.[24]

The problems currently caused by the high rate of BellSouth-caused manual fall-out will only worsen in the future, as the volumes of partially mechanized orders increase substantially from their current relatively modest levels. *See* AT&T at 23; WorldCom at 10. As CLECs ramp up for mass-market entry, CLECs will be required to wait even longer to receive status notices on partially mechanized orders, due dates for such orders will be even later, BellSouth will make even more errors in re-keying (and provisioning) such orders, and BellSouth will be even slower in responding to CLEC requests for order status information. *Id.* BellSouth clearly does not have adequate capacity to process these orders manually in an adequate and timely manner. Thus, the problems caused by the high rate of manual processing deny CLECs a meaningful opportunity to compete. As DOJ states, "[t]he ability of CLECs to compete with BellSouth – particularly in the residential market, where volumes are high and

[24] The conclusions of the GPSC and the LPSC that BellSouth is providing nondiscriminatory access to maintenance and repair functions ignore the fact that BellSouth is simply offering the same interfaces (TAFI and ECTA) that the Commission found to deny parity to CLECs in the *Louisiana II Order*. *See Louisiana II Order* ¶¶ 146-157; AT&T at 24-25; GPSC at 110; LPSC at 48-49. The GPSC's reasoning (that this Commission does not require a BOC to provide a machine-to-machine maintenance and repair interface) disregards the evidence that BellSouth is denying parity by failing to provide CLECs with an interface with the same functionality and integratability that it has in its own retail operations. AT&T at 48-49; GPSC at 110. The LPSC simply (and erroneously) relies on BellSouth's representation that it provides access to maintenance and repair functions in accordance with this Commission's requirements, while responding to AT&T's evidence with the assertion that AT&T is requesting an interface that is "not an industry standard" and should make such a request by using the bona fide request ("BFR") procedure. LPSC at 48-49. Whether the implementation of TAFI functionality in ECTA is consistent with industry standards, however, is irrelevant to the parity requirements of Section 271. Bradbury Decl. ¶ 162 & n.67. Moreover, the LPSC's suggestion that AT&T should follow the BFR procedure is illogical. AT&T has repeatedly requested since 1996 that BellSouth implement TAFI functionality in ECTA (including filing a change request 18 months ago), but BellSouth has refused to do so. *Id.* ¶ 161.

margins are thin – will depend largely on efficient electronic processing of orders and provisioning notices." DOJ Eval. at 14.

BellSouth, however, has not even shown that its electronic ordering systems have sufficient capacity to process reasonably foreseeable volumes of those orders that do flow through. Indeed, actual commercial usage of the interfaces shows that BellSouth's electronic OSS lack such capacity.[25] Moreover, KPMG was forced to abort its planned five-day volume testing of the OSS in Florida *on the very first day* because BellSouth's electronic interfaces failed to meet the standard at the very *lowest* level of planned volumes. *See* AT&T at 18. When KPMG resumed volume testing on October 30, it received invalid responses for nearly 20 percent of the pre-ordering queries that it had submitted. In a number of the invalid responses, BellSouth stated that it was not returning the requested information due to "resource limitation[s]" – clearly an admission of insufficient capacity. *See* Bradbury Reply Decl. ¶ 68 & Att. 24.

B. The Comments Demonstrate That BellSouth Has Not Provided CLECs With the Assistance Necessary For Proper Implementation of Its Interfaces.

The comments further demonstrate that BellSouth has failed to meet its obligation to provide CLECs with adequate assistance "to understand how to implement and use all of the OSS functions available to them." *Michigan 271 Order* ¶ 136. The DOJ concludes that "CLEC

[25] The frequent and lengthy outages experienced by BellSouth's electronic interfaces indicate that its electronic OSS lack sufficient capacity to handle reasonably foreseeable volumes. *See, e.g.,* Bradbury Decl. ¶ 252. The GPSC's conclusion that outages on BellSouth's interfaces are limited or unrelated to capacity problems (GPSC at 86) is contradicted by the evidence. *See, e.g.*, Siegler Decl. ¶¶ 36, 56-59 (describing outages on LENS interface used by AT&T in placing UNE-P orders); Birch at 29-31 (describing "staggering" number of outages on TAG interface); CompTel at 9 (same); Mpower at 2-5 (describing frequent, prolonged outages on LENS and EDI interfaces). These outages deny CLECs a meaningful opportunity to compete. *See* DOJ Eval. at 25 (when BellSouth's OSS are out of service, "the CLECs' ability to access customer information for prospective customers, order services to serve new customers, or make feature changes is severely diminished").

efforts to create robust electronic connections to BellSouth are hindered" because "BellSouth's quality assurance testing environment for its interfaces appears inadequate, and its 'change management' process for resolving problems affecting BellSouth's interfaces and updates to its systems appears unresponsive to CLEC concerns." DOJ Eval. at 13, 26.

1. BellSouth Has Neither Implemented, Nor Followed, an Adequate Change Control Procedure.

BellSouth has not established, or complied with, an adequate change control process ("CCP"). DOJ correctly notes that the current CCP in BellSouth's region "does not appear to prompt efficient implementation of system fixes for known defects in BellSouth's OSS as well as system enhancements desired by CLECs." DOJ Eval. at 29. The comments confirm that BellSouth's CCP denies CLECs meaningful input into the process, and gives BellSouth the sole power to decide what changes will be implemented, the priority in which changes will be implemented, and when changes will be implemented. BellSouth's CCP is also inadequate in scope, because it excludes such critical areas as BellSouth's order editing and legacy systems, any replacements to BellSouth's OSS, and billing systems – where many CLEC-affecting changes are made.

Finally, BellSouth has compounded the problems created by the inadequacies of the CCP by repeatedly disregarding it. *Id.*; AT&T at 26-28; Birch at 32-36; Cbeyond at 18-19; CompTel at 4-8; Covad at 30-34; WorldCom at 33-43. Most recently, BellSouth violated the CCP by implementing "migration by telephone number" functionality with only *one day's notice* to CLECs – and then did not even provide CLECs with the business rules for the new functionality until 5 days *after* such implementation. Bradbury Reply Decl. ¶ 16.

In light of this evidence, the conclusions of the GPSC and the LPSC that BellSouth has complied with its change control obligations are entitled to no weight, particularly in view of their lack of analysis. The GPSC's discussion of the issue consumes less than three pages, while the LPSC simply cites the discussion of the issue in its Staff's Final Recommendation in a one-sentence footnote without conducting any analysis of its own. *See* GPSC at 127-129; LPSC at 50 n.20.

Moreover, the analyses of the GPSC and the LPSC Staff are flawed. For example, the GPSC concludes that BellSouth has no veto power over change requests, because BellSouth "provides a reason for its response" and the CCP contains a process for escalation and dispute resolution. GPSC at 128. The fact that BellSouth provides a reason for its veto, however, does not alter the fact that BellSouth alone decides whether a change request or a process change shall be implemented. *See, e.g.,* AT&T at 26-27; Birch at 32, 35; CompTel at 6-7; WorldCom at 35-36. Moreover, the escalation and dispute resolution procedures in the CCP are of limited value to CLECs, since the lack of time deadlines for dispute resolution means that a veto by BellSouth, even if challenged, could remain in effect for months, or even longer. Bradbury Decl. ¶¶ 207-208.[26]

Further, the GPSC is incorrect in finding that the CCP is adequate notwithstanding its lack of a "go/no go vote" procedure, which would allow CLECs to decide whether to go forward with a planned release – and thereby avoid implementation of releases that have already been revealed to have problems. *See* GPSC at 128; *Texas 271 Order* ¶ 108; AT&T at 27. Contrary to the GPSC's assertion, the notification schedule of the CCP and BellSouth's versioning policy do not "accomplish the same result" as a go/no go vote procedure.

[26] The GPSC also errs in accepting BellSouth's explanation that it had not vetoed seven proposed changes in January 2001, as AT&T had alleged. GPSC at 128. AT&T's evidence showed that BellSouth's explanation was both misleading and factually incorrect – and that, in any event, BellSouth has vetoed four *additional* proposed changes since January 2001. *See* Bradbury Decl. ¶¶ 179-181.

Regardless of its length, advance notification of changes does not prevent premature cutovers if the underlying changes have problems. Furthermore, BellSouth's versioning policy is limited to industry standard releases, and therefore would not prevent premature cutovers in the case of other changes. Bradbury Decl. ¶ 186.[27]

The review of the CCP by the LPSC Staff is more inadequate. The Staff, for example, simply cites BellSouth's evidence in support of its conclusions while rejecting AT&T's evidence on the ground that CLECs "should adhere to the escalation and dispute control resolution process included in the CCP Document" if they are dissatisfied with the CCP. LPSC Staff Final Recommendation at 66 ("Staff Final"). That conclusion is contrary to the Commission's repeated holdings that the adequacy of a change control procedure is a factor to which it will give substantial consideration in determining whether a BOC is complying with its OSS obligations. *See, e.g., Texas 271 Order* ¶ 108. Staff also relies on the third-party testing in Georgia as evidence that the CCP is adequate – even though, as previously described, the scope of the Georgia test was too narrow to support such a conclusion. *See* Staff Final at 66; fn.27,

[27] The GPSC's reliance on KPMG's evaluation of change management in its Georgia test is misplaced. *See* GPSC at 129. KPMG's Georgia test focused on the mere existence and dissemination of documentation describing the change management process, not on the appropriateness or adequacy of the process itself or on the timeliness and adequacy of implementation. *See* Norris Decl. ¶ 44. By contrast, KPMG's more comprehensive testing in Florida has already found that the internal prioritization process used by BellSouth is exclusionary and arbitrary, that BellSouth's OSS documentation is inadequate in numerous respects, and that BellSouth does not adhere to the CCP. *See* Bradbury Decl. ¶¶ 196-200, 227, 234; Norris Decl. ¶¶ 35-45. Indeed, KPMG continues to find deficiencies in the BellSouth CCP in the Florida testing beyond those found in the KPMG exceptions and observations described in AT&T's opening comments. *See* KPMG Observation 123, issued October 5, 2001 (finding that "BellSouth does not have processes or documentation available with sufficient detail to guide a CLEC" during upgrades of the EDI and TAG interfaces); KPMG Observation 124, issued October 12, 2001 (finding that BellSouth failed to follow the procedures required by the CCP for changing and correcting defects in CLEC-impacting documentation). *See* Bradbury Reply Decl. ¶ 66 & Attachments 22-23.

supra. Staff's findings regarding the adequacy of BellSouth's documentation and compliance with the CCP are bald conclusions unaccompanied by any supporting analysis. *Id.* at 68.

2. BellSouth Fails To Provide An Adequate and Stable Test Environment.

The comments confirm that BellSouth has failed to provide an adequate and stable test environment. DOJ Eval. at 27-28; AT&T at 28-30; Birch at 32-35; WorldCom at 41-43. As DOJ states, "[a] robust test environment is critical to opening local markets," because "CLECs need to be able to ensure that their software interfaces interact correctly with the RBOC's interfaces before using them to submit orders for local customers." DOJ Eval. at 26. Neither of the test environments offered by BellSouth, however, meets that criterion. Most fundamentally, neither BellSouth's "original" test environment nor its newly-minted "CAVE" test environment (which is not currently available) meets the Commission's requirement that a test environment must mirror, but be separate from, the production environment. *See* DOJ Eval. at 26-28; AT&T at 29; *New York 271 Order* ¶ 109.[28]

The comments describe other deficiencies in the current BellSouth testing environments. For example, BellSouth's refusal to include its LENS interface in the CAVE testing environment has caused CLECs such as Birch to experience "chaos" and "significant disruption" in their operations (including the need to resort to manual procedures) because BellSouth's policy precludes users of LENS from detecting problems in changes prior to their actual implementation. Birch at 33-34. Both AT&T and WorldCom have encountered numerous deficiencies in CAVE, including unreasonable restrictions imposed on its use by BellSouth (such as the requirement that CLECs use ordering codes not used in actual production

[28] The current unavailability of the CAVE test environment has precluded CLECs from testing the new "migration by telephone number" functionality for UNE-P migration orders that BellSouth implemented earlier this month. Bradbury Reply Decl. ¶ 16.

and the limited number of available test scenarios). Bradbury Decl. ¶¶ 214-215; WorldCom at 41-43.

The analyses of the adequacy of BellSouth's test environment by the GPSC and LPSC ignore the overwhelming evidence that the environment is inadequate. Indeed, the GPSC never specifically addresses the test environment issue, but merely states that it does not find AT&T's criticisms of the CCP (which included criticisms of CAVE) "to be persuasive." GPSC at 81, 128. The LPSC fails to discuss the issue at all, other than to refer to the discussion of change control in its Staff's Final Recommendation. Staff's one-page discussion, however, simply recites BellSouth's evidence regarding its "original" test environment – which, as KPMG has already found, is patently inadequate. *See* Staff Final at 68-69; Bradbury Decl. ¶¶ 210-213; DOJ Eval. at 27-28. The Staff did not discuss CAVE, much less find it to be an adequate testing environment.[29]

II. BELLSOUTH'S PERFORMANCE REPORTING AND REMEDY PLANS ARE DEMONSTRABLY INADEQUATE.

The comments confirm that BellSouth's reported performance data are unreliable and cannot reasonably be considered a reflection of BellSouth's actual performance. First, as the DOJ notes, many of the metrics upon which BellSouth relies in its Application are "unreliable in several significant respects" and "should be revised to provide regulators and competitors with meaningful performance data." DOJ Eval. at 2, 35. Because so many of these measurements are ill-defined or inadequate to measure actual performance, they cannot serve as probative evidence that BellSouth has satisfied its obligations under Section 271. Bursh/Norris Reply Decl. ¶¶ 7-8.

[29] The LPSC's discussion of BellSouth's testing environment, including its description of the use of that environment by CLECs in 1999 and 2000, was plainly limited to the "original" BellSouth testing environment, since CAVE was not made available to CLECs until April 2001. *Compare* Staff Final at 69 *with* Stacy Aff. ¶¶ 152, 154, 157, 169.

Despite the overwhelming evidence that BellSouth's performance measurements are unreliable, the GPSC and LPSC appear to minimize the significance of the problem, accept BellSouth's evidence to the contrary, or suggest that issues regarding the adequacy of the measurements are not properly the subject of a Section 271 proceeding. *Id.* ¶ 8. These problems, however, cannot go away so easily. Because BellSouth seeks to rely on its performance measures and data in order to establish compliance with Section 271, the propriety of those measures is a critical issue in determining whether the reported data can be viewed as accurate and reliable evidence of BellSouth's performance. *Id.*

BellSouth, for example, has unilaterally altered performance measures and excluded orders for certain measures without authorization from the GPSC. *Id.* ¶¶ 10-12. In accepting BellSouth's testimony regarding these issues, the GPSC and LPSC accept BellSouth's own admission that it has excluded critical data (such as partially-mechanized completion notices) from its reports. *Id.* ¶¶ 16-18. In instance after instance, BellSouth's own business rules and SQMs belie the explanations for discrepancies in its data that BellSouth offers. *Id.* ¶¶ 16-36.

BellSouth has even characterized as "irrelevant" AT&T's concerns regarding the omission of data from its November 2000 raw data, given the implementation of the SQM and programming changes since that time. *Id.* ¶ 36. BellSouth's position is not only incorrect, but inconsistent with its reliance on the KPMG Georgia data integrity tests that were conducted prior to that time. *Id.*

Second, even leaving aside the impropriety of its performance measurements, the evidence demonstrates that BellSouth's reported performance data are unreliable. BellSouth has repeatedly filed corrections to its performance results that have affected scores of measures and resulted in changes in compliance determinations in BellSouth's performance reports. *Id.* ¶¶ 37-39; DOJ Eval. at 34.

Moreover, the KPMG testing in Georgia on which BellSouth relies generated a number of exceptions that contradict BellSouth's claims regarding the accuracy and reliability of its performance data. Significant exceptions remain open, and others "were deemed satisfied even where performance did not meet established Georgia PSC standards." DOJ Eval. at 5 n.14; Bursh/Norris Reply Decl. ¶ 40. In its current audit of BellSouth's performance measures, processes, and data in Georgia, KPMG has been unable to replicate numerous metrics charts provided by BellSouth. *Id.* ¶ 46. The Georgia audit remains incomplete, and significant issues relating to the accuracy and reliability of BellSouth's performance measures and data in Georgia remain unresolved. *Id.* ¶¶ 41-47. Finally, KPMG's ongoing third-party test in Florida has already uncovered many problems regarding the integrity of BellSouth's data, including problems not uncovered during the more limited Georgia test. *Id.* ¶ 48.[30]

Even if taken at face value, BellSouth's reported data show that it has not met its obligation to render nondiscriminatory access to CLECs. *Id.* ¶¶ 54-82. With respect to ordering, for example, BellSouth's reported data show that: (1) BellSouth missed the performance benchmarks for functional acknowledgment timeliness in May and August; (2) as described above, BellSouth's flow-through rates have consistently failed to meet the applicable benchmarks; (3) BellSouth has failed to provide timely order completion notices to CLECs; and (4) BellSouth "missed by a wide margin" the performance benchmarks for order accuracy. *Id.*

[30] The reliability of BellSouth's data is further undermined by its failure to provide CLECs with all of the raw data to which they are entitled to verify the accuracy of BellSouth's performance reports. Bursh/Norris Reply Decl. ¶¶ 52-53. Notwithstanding the GPSC's and LPSC's conclusion to the contrary, BellSouth has still not provided AT&T with the LNP raw data and
(continued)

¶¶ 57-58, 62-63, 65; DOJ Eval. at 17 n.51. In addition, BellSouth's reported intervals for UNE-P orders with less than 10 circuits have failed to meet the applicable retail analog.[31] BellSouth's performance with respect to hot cuts and trunk blocking has also been sorely deficient. Berger Decl. ¶ 44; Bursh/Norris Decl. ¶ 74. Finally, in the area of maintenance and repair, BellSouth's performance has been problematic. *Id.* ¶ 75.

Contrary to the conclusions of the LPSC, these problems will not be eliminated simply because performance remedy plans exist. *Id.* ¶ 75. Only the incentive for long-distance entry, rather than the monetary incentives under the remedy plans, will be effective in ensuring that BellSouth satisfies its Section 271 obligations. *Id.* ¶¶ 76-77. In any event, as AT&T and other commenters have shown, BellSouth's remedy plans are fatally flawed. The monetary consequences under the plans are insufficient to deter BellSouth from engaging in discriminatory conduct. Furthermore, the plans omit metrics that are critical for competitive entry, while containing structural deficiencies that shield BellSouth from any significant financial consequences for specific performance deficiencies. *Id.* ¶¶ 83-86. Given the public interest requirement of Section 271, these deficiencies must be corrected before BellSouth is granted authority to provide in-region, interLATA service.

III. BELLSOUTH DOES NOT PROVIDE NONDISCRIMINATORY LOCAL NUMBER PORTABILITY (CHECKLIST ITEM 11).

AT&T demonstrated in its comments that BellSouth does not provide nondiscriminatory local number portability (*see* AT&T at 33-39). The Georgia and Louisiana

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other categories of data that it needs to determine whether BellSouth is excluding such data from its performance reports and to assess the quality of service that BellSouth is providing. *Id.* ¶ 53.

[31] BellSouth's explanation in its Application for its failure to meet the applicable requirements is not only internally inconsistent, but also in direct conflict with the affidavit that its OSS witness, Mr. Stacy, filed in the GPSC's Section 271 proceedings nearly six months ago. Bursh/Norris Reply Decl. ¶¶ 66-73.

Commissions' comments do not refute AT&T's showing. For example, AT&T showed that, in a number of instances, after a number has been ported to an AT&T customer, BellSouth erroneously assigns the same number to a new BellSouth customer, which creates substantial confusion and inconvenience for the AT&T customer. AT&T at 36. The state commissions' sole response is that BellSouth instituted a "manual work-around" in January 2001 that will serve until BellSouth implements a software change to fix the problem in the third quarter of 2002. GPSC at 202-03; LPSC at 88. As AT&T demonstrated, however, this "manual work-around" has not prevented the problem from recurring since January 2001. *See* Berger Decl. ¶ 17. BellSouth's failure to implement a consistent, automated process is discriminatory and harms competition.

Similarly, AT&T established that BellSouth fails to perform the necessary switch translations when porting numbers to some customers, and as a result those customers cannot receive calls from BellSouth customers. AT&T at 34-35; Berger Decl. ¶¶ 19-27. The Georgia Commission dismisses this problem, again citing "manual" work-arounds – *i.e.*, BellSouth's formation of a "Project Team" for certain conversions – as a reasonable approach. GPSC at 203. BellSouth adopts this project management approach, however, only if the order consists of more than 50 lines or more than 3 blocks of 20 DID numbers. And even when BellSouth does provide this project management team, the problem recurs. Indeed, this "manual" work-around depends entirely on AT&T calling BellSouth every time the problem occurs. Moreover, AT&T specifically refuted BellSouth's claim – uncritically accepted by the GPSC (at 202-03) – that these problems are attributable to AT&T's submission of differing codes to BellSouth and to the Number Porting Administration Center. As AT&T explained, BellSouth's claim is based on a single episode that occurred in Kentucky, and it is clear that AT&T's mistake in that instance was not the cause of the problem. *See* AT&T at 35 n.15; Berger Decl. ¶ 26.[32]

For these and other reasons explained in AT&T's comments (at 33-39), BellSouth has not satisfied the local number portability item of the checklist.

IV. BELLSOUTH DOES NOT PROVIDE NONDISCRIMINATORY INTERCONNECTION (CHECKLIST ITEM 1).

The comments confirm that BellSouth does not provide nondiscriminatory interconnection, as required by the first checklist item. As AT&T and others demonstrated, BellSouth's own data show that competitive LECs experience far more trunk blocking than BellSouth in Georgia and Louisiana. *See* AT&T at 46-47; Sprint at 18-19; NuVox at 1-4. Indeed, the Commission rejected BellSouth's second Louisiana application in 1998 partly on this ground, and BellSouth's data show that its performance has dramatically *worsened* since that time. *Louisiana II Order* ¶ 77.

The Georgia and Louisiana Commissions' contrary conclusions rest entirely on the fact that BellSouth has satisfied its self-devised trunk blocking metric, contained in its Trunk Group Performance Report. *See* GPSC at 39-40; LPSC at 17. As AT&T explained, however, that metric is fatally flawed, for several reasons. First, the metric does not provide a "meaningful, 'apples-to-apples' comparison," because the metric is based on crudely designed groupings of trunks that include a substantial amount of BellSouth traffic in what is supposed to be a measure of CLEC trunk performance. DOJ Eval. at 37 n.132; NuVox at 3; *see also* AT&T at 47; McConnell/Berger Decl. ¶¶ 13-19. More importantly, BellSouth's metric compares

[32] The GPSC also claims that this Commission rejected an identical claim in the *Texas 271 Order* (at ¶ 372). The Commission rejected the claim, however, only because it "appear[ed] to be anecdotal and unsupported by any persuasive evidence." In this case, unrebutted testimony demonstrates that the problem has continued over many months. *See* Berger Decl. ¶¶ 13-17.

statewide averages of all BellSouth trunks and all competitive LEC trunks. As a result, where a competitive LEC experiences continual trunk blocking in certain parts of the state, BellSouth's metric masks that blocking, as BellSouth's witness, Mr. Milner, recently admitted in Florida. *See* Milner Florida Testimony at 1246-48 (Oct. 17, 2001).

Accordingly, the Commission should continue to rely on the same trunk blocking measurements that it has consistently used in other Section 271 proceedings, which are much more accurate than BellSouth's newly-minted and misleading metric. *See, e.g., New York 271 Order* ¶ 69; *Texas 271 Order* ¶¶ 67-68; *Louisiana II Order* ¶ 77. As AT&T demonstrated, under the Commission's established metrics, BellSouth's trunk blocking performance in 2001 has been substantially worse than its 1998 performance, which the Commission found insufficient to satisfy Section 271. *See* AT&T at 47; *Louisiana II Order* ¶ 77.

Although the data showing trunk blocking are incontrovertible and speak for themselves, NewSouth's effort to minimize the importance of this issue actually underscores the discriminatory impact of BellSouth's performance. NewSouth explains that, prior to May 2001, it experienced levels of trunk blocking that interfered with its ability to operate its network and compete for customers. *See* NewSouth at 5-6; *see also* GPSC at 35. NewSouth claims that this problem is now solved, but in all likelihood this is because NewSouth has negotiated a new interconnection agreement that requires BellSouth to augment trunk groups whenever NewSouth's "trunk groups reach 80 percent utilization." *Id.* at 6. It would appear that NewSouth has in effect bought an insurance policy to protect itself against BellSouth's chronically deficient performance. If so, NewSouth is paying extra just to get what BellSouth is obligated to provide in the first place.

V. BELLSOUTH DOES NOT PROVIDE NONDISCRIMINATORY ACCESS TO UNBUNDLED LOOPS (CHECKLIST ITEM 4).

The comments also demonstrate that BellSouth does not provide nondiscriminatory access to unbundled loops. *See* AT&T at 40-46; *see also* KMC at 3-10; Mpower at 31-32; Cbeyond at 7-12, 22-26. For example, as AT&T and others established, BellSouth's hot cut performance is both deficient and worsening. *See* AT&T at 40-41; Berger Decl. ¶¶ 62-71. The state commissions dismiss these showings solely on the grounds that BellSouth has satisfied its own self-designed metric. *See* GPSC at 161; LPSC at 59. As AT&T explained, however, BellSouth's metric is fundamentally flawed, because it does not measure the customer's experience. BellSouth's metric measures only the interval from the time the BellSouth technician disconnects the customer's loop from the BellSouth switch until the technician cross-connects the loop to the competitive LEC's equipment. When measured against the metric the Commission endorsed in the *New York 271 Order* (at ¶¶ 292-298) – which compares the interval from the due time until the time the CLEC is notified that the hot cut has been completed – BellSouth's performance falls far below what Section 271 requires. *See* Berger Decl. ¶ 68 (BellSouth's hot cuts in the last few months were timely less than 80 percent of the time); *New York 271 Order* ¶ 297 (90 percent timeliness acceptable under Section 271).[33]

Similarly, AT&T demonstrated (at 42-44) that BellSouth does not provide any feasible means of line sharing where BellSouth has deployed next generation digital loop carrier ("NGDLC"). The Georgia Commission's brief discussion simply does not come to grips with

[33] In an ex parte letter dated October 9, 2001, BellSouth provided additional data that ostensibly reflect the interval between completion of the cross-connect and notification of the CLEC. As AT&T explained, however, the additional data are still insufficient. To measure the impact on the customer, as the Commission did in the New York proceeding, the metric must measure the full interval from the *due time* to notification of the CLEC. The DOJ's suggestion that BellSouth's supplemental data "show that BellSouth provides timely hot cuts" is thus incorrect. *See* DOJ Eval. at 37 n.130.

the issue. GPSC at 165. This Commission expressly held in the *Line Sharing Reconsideration Order* that CLECs must have the ability to engage in line sharing on NGDLC loops as well as the option of accessing an NGDLC-equipped loop at either the central office or the remote terminal. *Line Sharing Reconsideration Order* ¶¶ 10-13. As AT&T showed, BellSouth does not permit a CLEC to obtain access to the full capabilities of the unbundled NGDLC loop at either the central office or the remote terminal. In effect, BellSouth forces CLECs to engage in line sharing only over copper loop facilities (if they are available), in direct violation of the Commission's line sharing orders. *See* Turner Decl. ¶¶ 11-13. Given that approximately 19 percent of BellSouth's loops are NGDLC loops, BellSouth's failure to provide access to line sharing walls off a substantial (and growing) portion of the advanced services market from competition.[34]

VI. BELLSOUTH'S INFLATED PRICING AND DISCRIMINATORY PRACTICES WITH RESPECT TO UNE-P PRECLUDE ANY FINDING OF COMPLIANCE WITH CHECKLIST ITEM 2.

The DOJ Evaluation and other comments confirm that BellSouth has failed to carry its burden of proving that its Georgia and Louisiana UNE rates satisfy Checklist Item 2. *See* DOJ Eval. at 10, 12; ACE at 17-21; AT&T at 58-62; Cbeyond at 26-27; CTA at 10-17; WorldCom at 54-60. As the DOJ emphasized, "the Department finds the amount of entry using UNE loops too small to serve as evidence that the costs of acquiring such loops from BellSouth are acceptably low," DOJ Eval. at 11, and UNE-based entry in Louisiana is even "less than in Georgia." *Id.* at 14.

[34] The comments also confirm that BellSouth's refusal to provide advanced services to customers that migrate their voice service to a CLEC is unreasonable and anticompetitive. *See* Mpower at 32-37; *see also* AT&T at 46 n.20.

That is hardly surprising. BellSouth's UNE rates in these states reflect significant TELRIC violations, including, *inter alia*, reliance on an impermissible reproduction cost approach, the use of exorbitant and unlawful loading factors that inflate or double count costs, and a host of other clear methodological errors in the calculation of the loop and switch element costs. *See* ACE at 17-21; AT&T at 48; Cbeyond at 26-27; CTA at 10-17; WorldCom at 54-60. Indeed, as discussed below, BellSouth has essentially conceded that the rates in its Application are overstated. Based on this record, there can be no finding that BellSouth has satisfied the requirements of Checklist Item 2.

A. The Comments Demonstrate That BellSouth's Georgia And Louisiana Switching Rates Are Substantially Inflated By Fundamental TELRIC Errors.

BellSouth has effectively conceded that its Georgia switching rates exceed those that any reasonable application of TELRIC principles would have produced. Although fatal to its Application, BellSouth has admitted that rate reductions to its Georgia switching rates are necessary to reflect "continually changing" costs of materials, new technologies, and better contract terms. *See* Caldwell Aff. ¶ 122. In a separate Georgia UNE pricing proceeding commenced just prior to the submission of this Application, BellSouth submitted new switching rates that are 35 percent *lower* than those upon which it now relies.[35] Because the rates in BellSouth's Georgia Section 271 Application do not reflect these reduced costs, its Application fails to satisfy Checklist Item 2.

As many commenters have explained, the switching rates in BellSouth's Georgia Application are inflated because, among other TELRIC violations, those rates include an

[35] *See* AT&T at 48. BellSouth filed its newly-proposed rates on October 1, 2001 – only one day before it filed its pending Section 271 Application. *See id.* n.23.

overstated daily usage feed ("DUF") charge[36] of $2.96 per line per month. *See* AT&T at 51; CTA at 15-17; WorldCom at 54-60.[37] In an ongoing UNE pricing case in Georgia, BellSouth has submitted a DUF charge – one that it claims is TELRIC-compatible – that when applied to AT&T would be no higher than $1.40 per line per month (less than half its current DUF charge). *See* AT&T at 51; *see also* WorldCom, Frentrup Decl. at n.9. And even that rate is too high. If Georgia's call volumes are applied to Verizon's rates, the Verizon DUF charges in effect in Pennsylvania (and under the recommended decision in New York) would be $0.55/line/month and $0.20/line/month respectively. AT&T at 51. Indeed, the comments raise considerable doubt that BellSouth should be entitled to collect any DUF charge. As WorldCom explained (at 60), "BellSouth should eliminate these [DUF] charges" altogether, because these costs are already recovered in the "shared and common costs that BellSouth adds on to the direct costs of its other UNEs."

BellSouth's Georgia cost models also inflate switching rates by computing those rates based on switch discounts for a "*mix* of new and growth switch purchases" where the "majority of switch-related purchases made by BellSouth are [assumed to] support growth in existing switches." Caldwell Aff. ¶ 85 (emphasis added). That assumption improperly relies on BellSouth's embedded network to compute switching costs. *See* AT&T at 52-53. As this Commission has held, forward-looking switching costs should be determined using newly-purchased switches efficiently sized to meet existing demand. Tenth Report and Order, *Federal-State Joint Board On Universal Service; Forward-Looking Mechanism for High Cost Support*

[36] The DUF charge is a fee that BellSouth and some other BOCs charge CLECs for information regarding CLECs' usage. *See id.* CLECs use that information to verify the accuracy of BellSouth bills and as a basis for billing their own customers.

[37] *See also Ex Parte Letter* from Christopher T. Shenk, AT&T, to Magalie Roman Salas, FCC Secretary, CC Docket No. 01-277 (filed Nov. 2, 2001).

for Non-Rural LECs ¶ 315 (rel. Nov. 2, 1999) ("*Inputs Order*"). By failing to apply the correct level of switch discounts, BellSouth's Georgia switch rates are likely to be overstated by as much as 50 percent. *See* AT&T at 53.

Contrary to the view of the Georgia Commission, the serious problems in BellSouth's Georgia switching rates cannot be ignored in the hopes that they somehow will disappear at the conclusion of the new UNE pricing case in Georgia. *See* GPSC at 137. Section 271 requires a showing that the BOC's rates comply with the checklist *today*. As the Commission has consistently emphasized, a "BOC's promises of *future* performance to address particular concerns raised by commenters have no probative value in demonstrating its *present* compliance with the requirements of Section 271." *Michigan 271 Order* ¶ 55 (emphasis in original); *see also id.* ("[p]aper promises do not, and cannot, satisfy a BOC's burden of proof"). This admonition applies with particular force here, where there is no guarantee that BellSouth's TELRIC violations will be resolved in the near future, or even what the outcome of the new rate proceedings will be. *See* AT&T at 50. Put simply, promises of future performance are not remotely sufficient to satisfy BellSouth's burden of proving that its Application satisfies Checklist Item 2.

In any event, even if BellSouth could rely upon its most recent switch rate *proposals,* BellSouth's Application would still not satisfy Checklist Item 2 because those proposed rates exceed TELRIC levels. *See* AT&T at 50-51. While the proposed rates reduce BellSouth's current rates by 35 percent, BellSouth's current rates are based on pre-1997 data, and switch costs have declined in Georgia by *at least* 40 percent since then. *See* Lieberman

Decl. ¶ 7.[38] In addition, BellSouth's proposed switching rates improperly include a new separate "features" charge of $2.28 per month per line. *See id.* ¶ 9. That charge is clearly excessive, *see id.,* and, in all events, the use of a *separate* features charge has, in the past, been rejected summarily by both the GPSC and the LPSC. *See id.*[39]

BellSouth's Louisiana switching rates also are well in excess of TELRIC levels, and exceed even the bloated Georgia rates on a cost-adjusted basis. *See* ACE at 17; AT&T at 53.[40] There is even an unexplained 27 percent difference (on a cost-adjusted basis) between the Louisiana switching rates and the reduced rates BellSouth just submitted in Georgia. *See* AT&T at 53. Furthermore, BellSouth's Louisiana rates are much higher than those in other BOC states in which Section 271 authority has been granted. *See* ACE at 17; AT&T at 53. On a cost-adjusted basis, BellSouth's Louisiana switch rates exceed those available in Kansas (by 31 percent), Texas (by 11 percent), and the New York recommended decision (by 38 percent). *See*

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[38] To compute the decline in switch costs, Mr. Lieberman analyzed BellSouth's Georgia net switch investments and its dial equipment minutes ("DEMs"). *See* Lieberman Decl. ¶ 7. That analysis showed that net switch investments have declined on a per-minute-of-use basis for the past several years and that net switch investment has grown much slower than DEMs. *See id.* The slow growing net switch investment, combined with the explosive increase in minutes, implies that there has been a 40% decline in switching investment per DEM between 1996 and 2001. *See id.*

[39] Finally, a comparison of BellSouth's Georgia switching rates to those in other Section 271-approved states confirms that the Georgia switching rates are overstated. Those rates exceed (on a cost-adjusted basis) rates in Kansas (by 39 percent), Texas (by 18 percent), and New York (by 57 percent). *See* AT&T at 50; ACE at 17-18. Even BellSouth admits that large rate disparities exist. According to BellSouth's calculations, its Georgia switching rates exceed those in Kansas (by 39 percent), Texas (by 52 percent), and Pennsylvania (by 13 percent). *See Ex Parte* Letter from Glenn T. Reynolds, BellSouth, to Magalie Roman Salas, FCC Secretary, CC Docket No. 01-277 (filed October 30, 2001).

[40] *See also Ex Parte* Letter from Glenn T. Reynolds, BellSouth, to Magalie Roman Salas, FCC Secretary, CC Docket No. 01-277 (filed October 30, 2001).

AT&T at 53.[41] In addition, BellSouth's Louisiana switching rates, like those in Georgia, reflect an inflated DUF charge of $2.43 that substantially exceeds the already excessive $1.40 DUF charge recently proposed by BellSouth for Georgia, as well as the DUF charges in other Section 271-approved states. *See id.*; *see also* CTA at 16 (citing a $2.13 DUF rate for Louisiana).[42]

B. The Comments Demonstrate That BellSouth's Georgia And Louisiana Loop Rates Are Substantially Inflated By Fundamental TELRIC Errors.

Even setting aside BellSouth's inflated Georgia and Louisiana switching rates, BellSouth's Application must be rejected because its UNE loop rates are also substantially overstated by numerous TELRIC errors in BellSouth's cost models. As an initial matter, BellSouth's Georgia and Louisiana cost models compute the costs of unbundled loops based on the assumption that BellSouth's networks use *no* integrated digital loop carrier ("IDLC"). *See* Caldwell Aff. ¶ 51; GPSC 1997 Order at 47.[43] As AT&T and other commenters have shown, that assumption violates fundamental TELRIC principles and significantly overstates BellSouth's unbundled loop costs. *See* AT&T at 54-55; WorldCom at 55-56. Even BellSouth

[41] BellSouth's own calculations confirm that large disparities exist between its Louisiana rates and those in other states. According to BellSouth's calculations, its Louisiana switching rates exceed those in Kansas (by 48 percent), Texas (by 61 percent), and Pennsylvania (by 2 percent). *See Ex Parte* Letter from Glenn T. Reynolds to Magalie Roman Salas, CC Docket No. 01-277 (filed October 30, 2001).

[42] BellSouth claims that its Louisiana cost models are TELRIC-compliant because they do not repeat *all* of the TELRIC violations in its Georgia cost models. *See* Application at 49-50. Although that argument provides conclusive evidence that BellSouth's Georgia cost models are flawed, it is hardly a valid defense of the Louisiana cost models, which themselves reflect critical TELRIC violations. *See, e.g.,* AT&T at 48-62.

[43] BellSouth's purported justification for not using *any* IDLC equipment when computing its cost of unbundled loops cannot withstand scrutiny. BellSouth asserts that in 1997 "IDLC loops [could not] . . . be separated from the switch" and therefore "were not suitable" for providing unbundled network elements. Application at 46. That is neither true nor relevant. The relevant issue is whether loop rates properly account for forward-looking available technology *today*. And it is now well-established that IDLC equipment can (and should) be used in incumbents' forward-looking networks to provide both bundled and unbundled loops. *See* AT&T at 54; WorldCom at 56.

concedes that IDLC equipment is far more efficient and less costly than universal digital loop equipment ("UDLC"). *See* Caldwell Aff. ¶ 51; *see also* AT&T at 54. The impact of this TELRIC error is substantial. BellSouth's failure to assume the use of IDLC in its rate computations adds at least $4.02 per line in Georgia and $2.65 in Louisiana. *See* AT&T at 55; WorldCom at 56 (explaining that using IDLC combined with GR-303 would reduce BellSouth's unbundled loop rates by at least one dollar).

In addition, BellSouth admits that its Georgia cost model relied on an impermissible reproduction approach to compute loop costs. *See* ACE at 19; AT&T at 55-56. The Commission's rules require that forward-looking costs be "measured based on the use of the most efficient telecommunications technology currently available and the lowest cost network configuration," where only the "existing location of the incumbent LEC's wire centers [are retained]." 47 C.F.R. § 51.505(b)(1). BellSouth's cost model violates this fundamental TELRIC principle by computing many critical inputs based on a small *sample* of BellSouth's *existing* network. *See* Application at 45; Caldwell Aff. ¶ 54; *see also* GPSC 1997 Order at 34. This means that loop characteristics used to compute BellSouth's loop rates are based on BellSouth's *existing* network and architecture, rather than on those that would exist in a forward-looking network as the Commission's rules require. *See* ACE at 19; AT&T at 55-56.[44]

[44] Even if BellSouth could lawfully rely on loop characteristics from its existing network, the samples BellSouth relied upon are flawed. The GPSC has already pointed out that BellSouth's loop sampling methodology "excluded approximately 20 percent of [BellSouth's Georgia] loop," and that most of the loops excluded were BellSouth's shorter Georgia loops. GPSC 1997 Order at 35. The GPSC tried to address this plain TELRIC error by ordering BellSouth to adjust its sample results to reflect the shorter lines that BellSouth originally excluded from its cost study. *See id.* at 36. But the GPSC addressed only part of the problem. Even assuming that the GPSC's "fix" helped to measure the length of loops in Georgia more accurately, those loop lengths are still based on BellSouth's *embedded* network and are thus not forward-looking. In any event, that fix did not address the errors in other inputs – *e.g.,* typical cable sheath sizes and proportions, structure mix requirements, bridge tap requirements, and feeder/distribution
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BellSouth's Georgia cost models also fail to reflect loop-related cost reductions that have occurred over the past few years. BellSouth's forward-looking cable and wire investment (a proxy for loop costs) declined by 51 percent between 1996 and 2001. *See* AT&T at 59. BellSouth has not even attempted to adjust its rates to account for these cost reductions. Thus, even if (contrary to fact) BellSouth's cost models had produced TELRIC-compliant loop rates for the year in which they were calculated (1997), those rates are clearly not TELRIC-compliant today.

In addition, BellSouth's Georgia loop rates are inflated by overstated drop length assumptions of 300 feet for buried drop wire and 200 feet for aerial drop wire. *See* AT&T at 60. Those assumptions stand in stark contrast to the national average drop length of 73 feet. *See id*. The only support provided by BellSouth for its high drop length estimate was a summary, one-page, handwritten list of drop lengths for the nine states in its region. *See id*. Even if such a list were sufficient to correctly identify BellSouth's actual Georgia drop lengths, those drop lengths are based on BellSouth's embedded plant. *See id.*

The Comments also demonstrate that, in Louisiana, BellSouth's cost study inflates UNE loop rates by severely understating fill factors (41 percent) for metallic distribution cable. *See* ACE at 20; AT&T at 59. That 41 percent fill factor is well below the fill factor used in other jurisdictions, and by the Commission in its Synthesis Cost Model. *See id.* For example, the Kansas Corporation Commission directed Southwestern Bell to use a 53 percent fill factor, explaining that 53 percent "represent[s] reasonable utilization rates on a long-term forward-looking basis." KCC Inputs Order at A-27. *See also Kansas/Oklahoma 271 Order* ¶ 80

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interface locations – that resulted from BellSouth's non-TELRIC sampling methodology. *See* AT&T at 56.

(rejecting a 30 percent fill factor and noting that the Commission has adopted fill factors ranging from 50 to 75 percent).[45]

C. The Comments Demonstrate That All of BellSouth's Georgia And Louisiana Rates Are Inflated By The Use of Non-TELRIC-Compatible Loading Factors.

Aside from the inflation in BellSouth's direct switching and loop costs, *all* of BellSouth's rates are inflated by the use of overstated loading factors. *See* ACE at 20; AT&T at 60-62; WorldCom at 56-57. Loading factors are estimated percentages of total costs that are attributable to component costs such as company labor, engineering, and "exempt" materials. The methodology used in BellSouth's cost models to compute loading factors violates TELRIC principles by basing those factors on BellSouth's embedded network and by double counting the costs of certain items. *See* ACE at 20; AT&T at 60-62; WorldCom at 56-57. BellSouth's loading factors for company labor, engineering and exempt materials, for example, are 42 and 13 percent for Georgia and Louisiana respectively, compared to only 6 percent in the Commission's Synthesis Model. BellSouth has offered no valid justification for these large discrepancies.

D. BellSouth's Inflated UNE Rates Frustrate The Communications Act's Policy of Encouraging The Development And Deployment of Innovative Services In Georgia And Louisiana.

The foregoing TELRIC violations effectively prevent CLECs from providing competitive voice grade services in Georgia and Louisiana. Indeed, as a result of these violations, the per-line gross margins (before accounting for marketing, customer service and other internal costs) that are available to potential new entrants in Louisiana are *negative* in two

[45] Likewise, the New York Public Service Commission adopted a 50 percent fill factor. *See, e.g.,* Tenth Report and Order, *Federal-State Joint Board on Universal Service*, 14 FCC Rcd. 20156, App. A (1999). And the mid-point of the distribution fill factors adopted by Massachusetts is 52.5 percent.

of the three Louisiana UNE zones and statewide, on average.[46] These violations, however, also prevent CLECs from providing innovative new services that customers are increasingly demanding. Most notably, BellSouth's inflated UNE prices deny CLECs the critically important ability to offer voice and data services over the same line. *See Line Sharing Order* ¶ 39 (noting that small businesses and mass market residential customers "typically desire a single line for voice and data services").

Even at the starting gates, CLECs are at a severe disadvantage compared to BellSouth when provisioning UNE-based voice/data services because, as discussed above, BellSouth's UNE rates are well above TELRIC-levels. Compounding this problem, BellSouth ensures that CLECs attempting to offer voice and data services over the same line are forced to pay the highest possible inflated UNE rates for each line. For example, when CLECs seek to provide voice and data over the same line, BellSouth's SGAT in both Louisiana and Georgia requires them to pay the much higher rates associated with purchasing UNE-L and port elements separately, rather than the lower UNE-P rate to which they are entitled. *See* Turner Decl. ¶ 28.[47] These separate UNE-L and port charges require CLECs to incur an additional $4.02 in Georgia and $2.65 in Louisiana above the UNE-P rate.[48] CLECs cannot hope to compete for consumers

[46] The only UNE zone where positive margins are available is zone 1, where the margin, a paltry $7.41, is not remotely sufficient to cover a potential new entrant's internal costs – *e.g.,* marketing, customer service, billing, order processing, and other operating activities.

[47] Although the GPSC in Docket 10692-U has ordered BellSouth to charge CLECs the UNE-P rate for line splitting arrangements, BellSouth has not amended its SGAT to reflect that decision. Worse yet, it is actively seeking to reverse that decision, arguing that it incurs greater "costs" when CLECs provide voice and data over a single line.

[48] As AT&T previously explained, the primary reason that the separate loop/port charges are overstated is because of BellSouth's failure to assume the use of efficient IDLC equipment in developing its loop costs. *See* AT&T at 55; Turner Decl. ¶ 28.

that increasingly demand voice and data over a single line if they are forced to incur these excessive costs that BellSouth itself does not have to bear.

BellSouth also increases CLECs' costs of providing voice/data service by charging above TELRIC-based levels for the necessary DC Power and collocation space. As Mpower explains (at 28-31), BellSouth's DC power rate structure forces CLECs to pay "monthly recurring charges for excess power that [the CLECs are] not using, and [do] not want." Likewise, BellSouth's collocation rate structure inflates CLECs costs. *See id.* at 31. AT&T has found that BellSouth charges almost a 50 percent higher rate for the same type of collocation space in Georgia as compared to Louisiana. And BellSouth further impedes CLECs' ability to offer voice/data services by refusing to provide CLECs with access to NDLC loops, engaging in discriminatory line splitting activities, and by failing to provide CLECs with electronic operations support systems for ordering, provisioning and maintaining line splitting. *See* Covad at 3-20; AT&T at 42-46; Mpower at 33-37.

These are real problems for AT&T. During the past few years, AT&T has attempted to take actions that would allow it to provide a competitively priced voice/data offering in Georgia and Louisiana. For example, AT&T has acquired facilities and collocation space from a failed data LEC (NorthPoint Communications) to carry out this strategy. However, because BellSouth's UNE loop rates are currently inflated by the fundamental TELRIC violations noted above (*e.g.,* overstated loading factors and reliance on embedded costs), and because of BellSouth's refusal to fairly provision loops capable of providing those services, AT&T cannot now profitably offer a combined voice/data service to Georgia and Louisiana customers that would be competitive with BellSouth's offerings. *See* Turner Decl. ¶¶ 7-30; Lieberman Decl. ¶¶ 2-27; Baranowski Decl. ¶¶ 2-36. Put simply, in addition to preventing

CLECs from providing competitive voice grade services in Georgia and Louisiana, BellSouth's policies effectively block CLEC competitive access to the increasing number of customers that demand voice and data over the same line.

E. BellSouth Does Not Make Available UNE-P On A Nondiscriminatory Basis.

The comments also confirm that BellSouth is not offering UNE-P service on a nondiscriminatory basis. As AT&T noted in its opening comments, 6 to 8 percent of its UNE-P customers lost dial tone or suffered service disruptions during or after conversion to AT&T service, and more than half of these problems are related to BellSouth's use of separate "D" (disconnect) and "N" (new) orders to process UNE-P conversions. AT&T at 63-65; Seigler Decl. ¶ 37, 38-50. Other CLECs are having similar problems. *See* WorldCom Lichtenberg Decl. ¶¶ 41-43 (over 1800 WorldCom UNE-P customers lost dial tone during July 1-September 23 period). As DOJ has explained, these outages and disruptions damage CLECs' reputations, stigmatizing their services as inferior. DOJ Eval. at 21.

The GPSC attempts to dismiss these problems, citing WorldCom's experience and claiming that instances of lost dial tone are rare. GPSC at 135. But, as the Justice Department noted, the Georgia Commission conclusion relied on small residential volumes from early summer, and thus does not address WorldCom's more recent experience, in which complaints of lost dial tone and other disruptions have increased as sales volumes have increased. DOJ Eval. at 22 & n. 68. In all events, the GPSC's findings with respect to *residential* service do not refute AT&T's showing that 6 to 8 percent of its *small business customers* have experienced unsatisfactory UNE-P service. Such significant levels of service disruption preclude meaningful competition: AT&T cannot engage in full-scale advertising and other broad market-entry strategies if 6 to 8 percent of its customers experience service disruptions that, for business customers, are intolerable.[49]

The Georgia Commission has recognized that BellSouth must eliminate the problems caused by its two-order conversion process for UNE-P customers and has required BellSouth to implement a single UNE-P conversion order by January 5, 2002. GPSC at 135. Despite the incentive of a $10,000 per day penalty for failing to comply with this order, however, BellSouth has acknowledged that it cannot correct the problem until spring of 2002. Until BellSouth implements its fix and actual experience demonstrates that this fix eliminates existing problems, this Commission cannot conclude that BellSouth offers nondiscriminatory UNE-P service to CLECs.

VII. THE COMMENTS CONFIRM THAT BELLSOUTH HAS NOT SATISFIED ITS RESALE OBLIGATIONS WITH RESPECT TO ADVANCED SERVICES.

The comments also confirm that BellSouth has not satisfied the resale checklist item, because it does not make DSL transport services available for resale pursuant to Section 251(c)(4). First, BellSouth's own witness concedes that its "wholesale" DSL services have been

[49] NewSouth Communications Corp. ("NewSouth") has submitted comments noting improvement in BellSouth's UNE-P service "during the past year." *See* NewSouth at 3. As recently as mid-July, however, NewSouth was a forceful critic of BellSouth's UNE-P service. *See* Reply Comments of NewSouth Communications Corp., Georgia P.S.C. Docket No. 6863-U (July 16, 2001), at 7-8 ("NewSouth continues to experience service outages at the time of UNE Platform cutovers because BellSouth's systems separate UNE Platform orders into separate Disconnect and New orders . . . . In the past two weeks alone, four NewSouth customers suffered loss of service at the most sensitive time – as their service was being switched from BellSouth to NewSouth. . . . One of these customers continues to experience problems after nearly two weeks."); *see also* Comments of NewSouth Communications Corp., Georgia P.S.C. Docket No. 6863-U (May 31, 2001), at 10 ("NewSouth experienced service-affecting issues on roughly ten percent (10%) of its orders and complete loss of service on about five percent (5%) of its orders."). At best, the improved attention NewSouth claims to have experienced since mid-July would appear to reflect favored treatment (motivated, no doubt, by BellSouth's desire to enhance the prospects for its Section 271 application). Potentially improved service to one CLEC, however, still constitutes discriminatory treatment under the Act where, as here, similar service is not afforded to *all* CLECs.

purchased by, and even marketed to, retail customers. *See* AT&T at 70 (citing Fogle Aff. ¶ 10); ASCENT at 6 n.12.

More fundamentally, however, BellSouth's attempt to evade its Section 251(c)(4) resale obligations by limiting its retail offerings to DSL telecommunications bundled with internet access – and refusing to offer DSL transport as a stand-alone service – is unlawful. The Commission made clear in the *CPE Bundling Order*[50] that one of the nonstructural safeguards that permit a dominant LEC like BellSouth to offer enhanced services on an integrated basis is the separate availability at retail of the underlying telecommunications. As the Commission explained, "the separate availability of the transmission service [here, DSL telecommunications] is *fundamental* to ensuring that dominant carriers cannot discriminate against customers who do not purchase all the components of a bundle from the carriers themselves." *CPE Bundling Order* ¶ 44 (emphasis added). A stand-alone retail offer of DSL transport would unquestionably constitute a "telecommunications service" subject to the resale obligations of Section 251(c)(4). *See also* ASCENT at 2-9.

In short, as long as BellSouth offers a bundle of internet access and DSL transport at retail, it must also offer DSL transport on a stand-alone basis (pursuant to the *CPE Bundling Order*) and permit CLECs to resell that service (pursuant to Section 251(c)(4)). Its refusal to do so violates the competitive checklist.

VIII. BELLSOUTH'S ENTRY INTO THE INTERLATA MARKET IS NOT CONSISTENT WITH THE PUBLIC INTEREST.

Finally, the comments confirm that BellSouth's entry in either Georgia or Louisiana would not now be in the public interest. The public interest inquiry, as Congress

[50] Report and Order, *Implementation of Section 254(g) of the Communications Act of 1934, as amended 1998 Biennial Regulatory Review - Review of Customer Premises Equipment And Enhanced Services Unbundling Rules*, 16 FCC Rcd. 7418 (2001).

conceived it and as this Commission has explained, essentially requires two analytical steps: first, an assessment of the actual state of local competition, and, second, in the absence of local competition, an analysis of the cause of that circumstance.[51] Here, BellSouth's own data (which *overstate* CLEC entry) demonstrate that competition is minimal, particularly in Louisiana. Moreover, DOJ's evaluation and other comments confirm that the absence of virtually any facilities or UNE-based residential competition is *not* the result of neutral business considerations uniquely within the control of new entrants, *Michigan 271 Order* ¶¶ 385-391, but is rather due to BellSouth's anticompetitive refusal to open local markets in Georgia and Louisiana to competitors.

The first step in determining whether local markets are in fact fully open to competition "looks to actual competitive entry, because the experience of competitors seeking to enter a market can provide highly probative evidence about the presence or absence of artificial barriers to entry."[52] Here, the record, including BellSouth's own ex parte updating CLEC entry data between July and September,[53] underscores the absence of local competition, particularly residential competition. BellSouth's data for Louisiana are particularly striking. Between July and September 2001, the number of facilities-based residential lines increased by a grand total of 99 and the number of UNE-P residential lines *fell* by 408 lines.[54] In other words, during the most recent three month period for which data are available – a period during which BellSouth claims local markets were irreversibly open to competition and when, with BellSouth poised to enter the long distance market, incentives for long distance companies to enter local markets are assertedly

[51] DOJ Eval. at 7; AT&T at 71; Sprint at 11-12, 17-20.

[52] DOJ Eval. at 7 n.21.

[53] Ex parte letter from Jonathan Banks, General Attorney, BellSouth Corporation to Magalie Roman Salas, Secretary, FCC (November 1, 2001).

at their peak – CLEC entry into Louisiana residential markets via facilities and UNE-P combined actually *decreased*. As reflected in Table 1, this means that only 2/10 of 1 percent of the residential lines in BellSouth's Louisiana territories are served by CLECs via facilities- or UNE-based service.

TABLE 1: Residential Market CLEC Penetration in BellSouth Louisiana Service Territory

	Quantity	**Share**
BellSouth Louisiana Retail Residential Switched Access Lines (BellSouth 11/1/01 Ex Parte)	1,604,504	95.9%
CLEC Residential Facilities-Based Lines (Wakeling Aff. Ex. VW-15, updated by BellSouth 11/1/01 Ex Parte)	964	0.0%
CLEC Residential UNE-P Lines (Wakeling Aff. Ex. VW-15, updated by BellSouth 11/1/01 Ex Parte)	3,119	0.2%
CLEC Residential Resale Lines (Wakeling Aff. Ex. VW-9, updated by BellSouth 11/1/01 Ex Parte)	63,670	3.6%
Total Residential Lines in BellSouth Louisiana Service Territory (BellSouth 11/1/10 Ex Parte)	**1,672,257**	**100.0%**

Moreover, although residential service in Louisiana provides the most striking example of BellSouth's continued local monopoly, entry in other local markets in Georgia and Louisiana also remains very limited. The DOJ states that the limited entry by CLECs, even as reflected in BellSouth's data, precludes any presumption that Georgia's local markets are open to either resale- or UNE-based competition and, "[i]n Louisiana, the amount of entry does not entitle BellSouth to a presumption of openness as to any mode."[55] Although, based on BellSouth's E-911 data, DOJ "presumes that fully facilities-based competition is not hindered in a competitively significant manner" in Georgia,[56] the Department also notes that the degree to which customers throughout Georgia can benefit from AT&T's cable offering in Atlanta (which

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[54] DOJ Eval. at 11 & Table 2.

[55] DOJ Eval. at 7.

[56] *Id.*

is the bulk of the facilities-based lines identified by BellSouth) "is questionable," with "no indication in the record that higher cost rural customers will receive such service."[57]

Moreover, as the comments show, BellSouth's E-911 database significantly overstates competitive entry into local markets.[58] For example, BellSouth's data attributes customers to Sprint in both Georgia and Louisiana, even though "Sprint is not providing local service in either state."[59] Further, the vast bulk of CLEC facilities-based traffic in Georgia and Louisiana is for a narrow group of customers, Internet Service Providers ("ISPs").[60] When ISP lines are eliminated, the number of facilities-based lines served by BellSouth is reduced by about 75% in Georgia and 60% in Louisiana.[61] Finally, the comments also show that the CLECs BellSouth identifies as providing facilities-based competition in Georgia and Louisiana have gone, or are going, out of business or are otherwise in acute financial distress.[62]

Because the relevant data show a lack of meaningful local competition, the Commission must ultimately determine "whether the lack of competitive entry is due to the BOC's failure to cooperate in opening its network to competitors, the existence of barriers to entry, the business decisions of potential entrants, or some other reason." *Michigan 271 Order* ¶ 391. As summarized above, DOJ's Evaluation and other comments make clear that entry barriers and BellSouth's own actions – *not* the business decisions of potential entrants – have perpetuated BellSouth's monopoly over residential service in Georgia and Louisiana.

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[57] *Id.* at 10, n.28.

[58] AT&T at 76-77; Sprint at 15-17; Gillan Decl. ¶¶ 18-27.

[59] Sprint at 17.

[60] AT&T at 76-77; Sprint at 15-16.

[61] AT&T at 77; Gillan Decl. Table 6.

[62] AT&T at 77 & Attachments 2, 3; Sprint at 3-11 & Attachment A.

Under these circumstances, BellSouth's Application for long distance authorization is clearly premature and contrary to the public interest. The recent Report of the Texas Public Utility Commission ("TPUC") describing the persistence of SWBT's monopoly power in residential and rural markets in Texas, and the extension of that monopoly into the provision of bundled services[63] demonstrates the danger of premature long distance authorization. If evidence of a closed local market is ignored on the theory that interLATA authorization will prompt competition, consumers will pay a heavy price in the form of remonopolization and higher prices. Indeed, the outcome in Georgia and Louisiana, if BellSouth's Application were granted, would undoubtedly be far worse than in Texas. In Texas, at the time of SWBT's Section 271 application, numerous competitors had made enormous sunk investments in an effort to make local residential competition a reality and the number of lines served by facilities- and UNE-based entrants was growing rapidly. By contrast, there is far less sunk investment in Georgia and almost none in Louisiana, where BellSouth's own recent data show facilities- and UNE-based CLECs actually losing market share. To avoid remonopolization, the Commission should deny BellSouth interLATA authorization until it truly opens its local markets to competition, so that numerous competitors can offer consumers the benefits both of one-stop shopping and of a competitive marketplace. The public interest standard of Section 271 requires no less.

[63] AT&T at 81-84 & Attachment 1.

CONCLUSION

For the reasons stated above and in AT&T's opening comments, the Commission should deny BellSouth's Joint Application for Georgia and Louisiana.

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